United States Court of Appeals for the Second Circuit



SUPPLEMENTAL APPENDIX

75-7659

United States Court of Appeals

FOR THE SECOND CIRCUIT

VICENTE LUGO,

Plaintiff-Appellant,

-against-

ISTHMIAN LINES, INC.,

Defendant-App

MAY 3 1974

A DANIEL FLISARO, CLEEN
SECOND CIRCUIT

SUPPLEMENTAL APPENDIX OF DEFENDANT-APPELLEE

(PURSUANT TO PERMISSION GRANTED BY ORDER OF APRIL 15, 1976 OF THE PERTINENT PORTIONS OF THE RECORD OMITTED FROM PLAINTIFF-APPELLANT'S APPENDIX)

> Kirlin Campbell & Keating Attorneys for Defendant-Appellee 120 Broadway New York, New York 10005

PAGINATION AS IN ORIGINAL COPY

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RELEVANT DOCKET ENTRIES

une 24, 1919	June	24,	1975	
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Jury trial begun before Judge Bryan, United States District Court, Southern District of New York.

July 1, 1975

Trial concluded and special verdict in favor of defendant.

July 17, 1975

Filed plaintiff's affidavit and Notice of Motion for directed verdict and for judgment notwithstanding the verdict er for a new verdict.

September 19, 1975

Filed defendant's memorandum of law in opposition to plaintiff's motion for directed verdict and for judgment notwithstanding the verdict or for a new trial.

October 23, 1975

Filed memorandum and order denying plaintiff's motion pursuant to Rules 50 and 59 for directed verdict and for judgment notwithstanding the verdict or for a new trial.

October 30, 1975

Filed judgment in favor of defendant against plaintiff dismissing the complaint.

November 24, 1975

Filed Notice of Appeal of Plaintiff from order entered October 30, 1975.

December 23, 1975

Filed endorsement order granting plaintiff's motion for leave to appeal in forma pauperis and proceed on type-written or photocopied briefs and appendix.

1	mb/lf	Lugo-Direct 44
2	Α	Yes, sir.
3	Q	With respect to the deck department, as an ordinary
4	seaman, v	were you the lowest rated seaman?
5		MR. DOUGHERTY: Objection, leading.
6	Δ	Yes, sir.
7		THE COURT: I will allow it.
8		Is there a chain of command aboard a vessel?
9	А	Yes, sir.
10	Q	With respect to the deck department, what was the
11	chain of	command aboard the SS Steel Maker?
12	А	From the captain to the chief mate, chief mate to
13	the bos's	n, the bos'n to the ABs.
14		And from the AB, was there any chain?
15	A	To the ordinary seaman.
16	4,	The deck department, did that involve work out on
17	the deck	of the vessel?
18	А	Yes, sir.
19	C	We understand the steward department, was that the
20	food dep	artment aboard the ship?
21	А	Yes, sir.
22	6	And the engine department, was that the department
23	that too	k care of the ship's engines below?
2′	A	Yes, sir.
25	۵	Now on June 1, 1972, where was the SS Steel Maker?

1	mb/	11	Lugo-Direct	45
2		Α	At sea.	
3		C	In what vicinity?	
4		А	In the vicinity of Guam.	
5		Q	That is the island of Guam?	
6		А	Yes, sir.	
7		Q	On that day what time did you commence work?	
8		Α	Four o'clock in the morning.	
9		Q	You worked from 4:00 a.m. to what time?	
10		А	Till eight in the morning.	
11		Q	8:00 a.m.?	
12		A.	Yes, sir.	
13		Q	Was that your regular watch?	
14		А	Yes, sir.	
15		Q	Did Mr. Palmer and Mr. LaFrance work with y	ou on
16	that	t wat	tch?	
17		А	Yes, sir.	
18		ର	After you finished your watch at 8:00 a.m.,	wha t
19	did	you	do?	
20			THE COURT: You are talking about this morn!	ng?
21			MR. ABARBANEL: Yes, June 1, 1972.	
22			THE COURT: All right.	
23		Α	I went to my room to change my shirt because	1t
24	was	wet	from sweating. Then after that, I went for c	offee.
25		0	Was that breakfast times	

1	mb/lf Lugo-Direct 53
2	Q And by forward, do you mean the front?
3	A Yes, sir.
4	How was that light placed at this forward ladder?
5	A At the foot of the ladder on the deck.
6	Q On the deck. In what way was it placed on the
7	deck?
8	A On the side.
9	Q The other light which was placed in the port tank,
10	how was that placed in the port tank?
11	A It was hung to the about three feet from the
12	inside the tank, was hanging from the ladder.
13	When you say on the ladder, is that a ladder inside
14	the tank?
15	A Yes, sir.
16	The two front or forward tanks, were they covered
17	or uncovered?
18	A The two front were covered.
19	The two after or rear tanks, were they covered or
20	uncovered?
21	A They were uncovered.
22	THE COURT: They were not covered?
23	THE WITNESS: They were not covered.
24	THE COURT: They were uncovered?
25	THE WITNESS: Yes, sir.

1	mb/lf	Lugo-Direct	54
2		THE COURT: Thank you.	
3	Q	What was the temperature in that area when yo	ou
4	entered?		
5		MR. DOUGHERTY: Objection, your Honor, unless	he
6	knows.		
7		THE COURT: Yes.	
8		MR. ABARBANEL: Well, your Honor, people know	what
9	emperati	ures are.	
10		MR. DOUGHERTY: Not necessarily so.	
11		THE COURT: They know what temperatures are.	Are
12	you aski	ng him in terms of degrees?	
13		MR. ABARBANEL: Yes.	
14		THE COURT: Did he have a thermometer?	
15		MR. ABARBANEL: Your Honor, the average norma	al man
16	has been	exposed to temperature throughout his life and	he he
17	can estir	mate temperature, and I admit to your Honor	
18		THE COURT: All right, I'll allow h'm to est	mate it
19	in degree	es. He can testify it was hot, very hot, cold	i, what
20	ever it	is.	
21	(Will you describe the temperature in the hold	1?
22	А	It was very not.	
23	Q	How was it compared to the temperature outside	le on
24	the deck	?	
25	α Λ	More hot.	

1	mb/lf	Lugo-Direct	56
2	Q	What work did you do at that time?	
3	Α	I assist LaFrance and Palmer to remove the p	olates and
4	the vent	lation system.	
5		Was this ventilation system in the deep tank	s them-
6	selves?		
7	А	Yes, sir.	
8	Q	Was there a separate ventilation system for	the hatch
9	separate	and distinct from the ventilation system?	
10		MR. DOUGHERTY: If your Honor please, once a	iga1n
11	the attor	rney really is testifying here rather than th	e
12	plaintifi	f himself. He is leading.	
13		THE COURT: I'll allow that question.	
14	0	You may answer, Mr. Lugo.	
15	A	Yes, sir.	
16	Q	Do you know where the switches were for thes	se vent!-
17	lat'on s	ystems?	
18	Α	No, sir.	
19	Q	Were you ever told where they were?	
20	А	No, sir.	
21		These lights that you brought down, did they	r have
22	how many	bulbs in them?	
23	٨	About 200.	
24	Q	That is the wattage, 200. How many bulbs?	
25	Α	How many bulbs? Just one.	

THE COURT: All right.

25

	1	mb/lf Lugo-Direct 59	
	2	MR. ABARBANEL: Yes.	
	3	THE COURT: Is that agreeable?	
	4	MR. ABARBANEL: Yes, your Honor.	
	5	THE COURT: It will be admitted.	
XXX	6	(Plaintiff's Exhibit 1 marked in evidence.)	
	7	MR. ABARBANEL: For purposes of record, may I show	
	8	it to Mr. Lugo?	
	9	THE COURT: Yes.	
	10	o Mr. Lugo, is that the type of light you brought	
	11	down into the number 2 hatch ith you on the day of the	
	12	accident?	
	13	A Yes, sir.	
	14	MR. ABARBANEL: May I show this to the jury, your	
	15	Honor?	
	16	THE COURT: All right.	
	17	Q What was the wattage of this bulb?	
	18	MR. ABARBANEL: Will you read the question back to	
	19	Mr. Lugo, please, Mr. Reporter?	
	20	(Question read)	
	21	A About 200.	
	22	What work did you do at that time?	
	23	A I assist LaFrance and Palmer to help remove the	
	24	plates on the ventilation system.	
	25	When you were in the port tank, what did you notice	

1	mb/lf Lugo-Direct 60
2	with respect to the bulkheads?
3	MR. DOUGHERTY: Objection, your Honor, leading.
4	THE COURT: What, if anything.
5	What, if anything, did you notice with respect to
6	the bulkheads?
7	THE COURT: You may answer, Mr. Lugo.
8	A They had residual oil.
9	Q By bulkheads, so we understand, we mean the walls
10	of the deep tanks?
11	A Yes, sir.
12	Q Do you know what cargo was carried in the two after
13	tanks?
14	A Yes, sir.
15	Q What cargo was 1t?
16	A Lube oil.
17	By lube oil do you mean lubrication oil?
18	A Yes, sir.
19	Was there any odor from that residual lube oil
20	which we're talking about?
21	MR. DOUGHERTY: Objection.
22	THE COURT: No, objection sustained. There is no
23	evidence there was residual lube oil on the bulkhead.
24	MR. ABARBANEL: He just testified.
25	THE COURT: Well, all right. It was some substance

1	mb/lf Lugo-Direct 61
2	on the bulkhead. Is that right?
3	THE WITNESS: Yes, sir.
4	MR. ABARBANEL: My recollection, if you read the
5	record back was he testified what that substance was, your
6	Honor.
7	THE COURT: All right, what was the substance, if you
8	know?
9	THE WITNESS: Residual oil.
10	THE COURT: Was it liquid? Was it just powder?
11	THE WITNESS: It was dry.
12	THE COURT: It was dry?
13	THE WITNESS: Yes, sir.
14	THE COURT: Dried oil?
15	THE WITNESS: Not really dry but it was sticking
16	onto the to the wall.
17	THE COURT: All right, so ahead.
18	MR. ABARBANEL: Would you please read that last
19	answer back?
20	MR. DOUGHERTY: My objection is that the attorney
21	is saying to him and suggesting to the plaintiff, was there
22	an odor. The witness hasn't said it. The attorney has said
23	was there an odor and that is a leading question.
24	THE COURT: Now you have to be careful about leading
25	here, Mr. Abarbanel.

1	mb/lf	Lugo-Direct	62
2		MR. ABARBANEL: I will try to be careful.	
3	Q	Mr. Lugo	
4		MR. ABARBANEL: I am sorry; Mr. Reporter,	
5	read bac	k the last -	
6		THE COURT: You asked the question: did you	smell
7	anything	?	
8	Q	Did you smell anything?	
9	А	Yes, sir.	
10	Q	What did you smell?	
11	Α	Petroleum.	
12	Q	Was that strike that, withdraw that.	
13		Where did that smell come from?	
14	А	From the inside of the deep tank, the bulk o	f the
15	tank.		
16	ବ	What type of oil was this? Just to make it	clear.
17		MR. DOUGHERTY: Lube oil.	
18		MR. ABARBANLL: As long as you agree that is	wnat
19	he testi	fied.	
20		THE COURT: The tank was empty, wasn't it, who	en you
21	looked a	t ft?	
22		THE WITNESS: Yes, your Honor.	
23		THE COURT: So what you are talking about her	re is
24	some sor	t of thing you say was stuck to the side of th	ne tank,
25	is that i	right?	

1	mb/lf	Lugo-Direct	63
2		THE WITNESS: Yes, sir.	
3		THE COURT: All right.	
4	e	When was that lube oil withdrawn.	
5		Do you know what kind of cargo was	
6	carried	in those two aft deep tanks?	
7		THE COURT: When?	
8	Q	At the commencement of the voyage.	
9	Α.	011.	
16	c	Where was it loaded and when?	
11	А	When I don't remember. It was loaded in Lou	isiana.
12	କ	Was it at the start of the voyage?	
13	A	At the start of the voyage.	
14	c	And when was that cargo discharged?	
15	A	First week of March in Bombay.	
16	କ	This residual lube oil which was on the bulk	chead,
17	how long	was it on there as far as you know?	
18	,	Over three months.	
19	Q	After you started the work, do you know why	they
20	were rem	oving the duct plates from the ventilation s	stem?
21	А	No, sir.	
22	Q	How long did it take you to do that work in	the
23	port dee	p tank?	
24	А	Took us about hour and a half or two hours.	
25	Q	I am talking about the port deep tank itself	f, Mr.

1	mb/lf	Lugo-Direct 69
2	Q	What did you do?
3	А	We went for coffee.
4	Q	But what did you, yourself, do at that time after
5	you left	the hatch for coffee?
6	А	I went to my room to change my shirt.
7	Q	Why did you change your shirt?
8	A	It was wet from sweating.
9	Q	And then what did you do?
10	Д	Then I went for coffee and I asked I got some
11	salt tab:	lets, and then I went for coffee.
12	c	Did you take the salt tablets?
13	Α	Yes, sir.
14	Ç	Will you explain to us why you took the salt tablets?
15	£.	I used to sweat a lot.
16	C	After coffee, what did you do?
17	Α	Went back to the deep tank.
18	Q	Who went back with you?
19	A	LaFrance and Palmer.
20	Q	How did you enter the deep tank at that time? I
21	should sa	ay the hatch. Withdraw the question and rephrase it.
22		How did you enter number 2 hatch at that time?
23	А	Through the resistor house.
24	Q	Before you entered the number 2 hatch for the second
	II.	

time after coffee break, what was the condition of the sea

1	mb/lf	Lugo-Direct	70
2	at that	time?	
3	٨	Calm.	
-4	ζ,	What were the weather conditions?	
5	Α	Hot.	
6	Q	Was the ship proceeding?	
7	Α	Yes, sir.	
8	ą.	What effect did the movement of the ship have	e upon
9	the air	at that time?	
10	A	Cool breeze.	
11	6	When you entered the number 2 hatch for the	second
12	time, ap	oproximately what time was that?	
13	^	Five minutes to ten.	
14	ର	When you entered the hatch for the first time	e,
15	was the	ventilation system on in the hatch itself?	
16	А	No, sir.	
17	Q	Was the ventilation system on in the deep tan	ks?
18	Α	No, sir.	
19	Q	When you entered the hatch for the second ti	me
20	fter co	ffee break, was the ventilation system on in	the
21	hatch?		
22	Α	No, sir.	
23	ą	Was it on in the deep tanks?	
24	Д	No, sir.	
25	ର	Approximately what time is coffee break? Ab	out what

1	mb/lf Lugo-Direct 71
2	time in the morning is coffee break?
3	A Five to ten, I think.
4	To what time? How long a period?
5	A To a quarter after ten.
6	Q Would it be correct to state it was about that
7	time that you went in the hatch for the second time?
8	A Yes, sir.
9	Now when you went down into the hatch for the second
10	time, did you go to the area of the deep tanks?
11	A Yes, sir.
12	Q At that time where were the lights located?
13	THE COURT: Were they located in the same places
14	they were before?
15	MR. ABARBANEL: No, sir, not while they were working
16	THE COURT: No, I am asking him.
17	MR. ABARBANEL: I am sorry.
18	Q Mr. Lugo, the judge is asking you a question.
19	THE COURT: Were the lights changed in any way from
20	what they were before?
21	THE WITNESS: We switched one light from the port
22	tank to the starboard tank.
23	Q When did you do that?
24	Before we knocked off for coffee.
25	Therefore, when you went down into the hatch after

	LODA
1	mb/lf Lugo-Direct
2	(At the side bar)
3	(Answer read)
4	THE COURT: All right, I will strike the answer.
5	You can ask him was it hot.
6	MR. ABARBANEL: All right.
7	(In open court)
8	Q When you went into the hatch for the second time,
9	was it hot?
10	A Yes, sir.
11	MR. DOUGHERTY: Objection, leading.
12	THE COURT: No, I allowed that, told him he could
13	ask the question.
14	Was it hotter inside the hatch than it was outside
15	on the main deck?
16	A Yes, sir.
17	MR. ABARBANEL: We have an agreement as to the next
18	exhibit, Plaintiff's Exhibit 5 to be submitted in evidence
19	as the starboard deep tank aft.
20	(Flaintiff's Exhibit 5 received in evidence.)
21	THE COURT: What is this supposed to be?
22	MR. ABARBANEL: This is a fair representation of how
23	the number 5 aft I am sorry how the number 2 starboard
24	aft deep tank looked aboard the SS Steel Maker.
25	THE COURT: All right. It may be admitted.

1	mb/lf Lugo-Direct 74
2 .	Mr. Lugo, looking at this picture, is that the
3	tank, the starboard tank in which you started to commence
4	work?
5	THE COURT: We just stipulated. Why do you have
6	to have this?
7	Q Was that the tank you started to work in after
8	coffee break?
9	A Yes, sir.
10	THE COURT: All right.
11	Q When you switched the light 'nto the starboard
12	aft deep tank, where was that light placed
13	A Right here, the red mark.
14	Q Where the red mark LL-1 is?
15	A Yes, sir.
16	What direction was that light facting?
17	A Straight down, facing straight down.
18	Was the other light still at the forward ladder
19	as described previously?
20	A Yes, sir.
21	MR. ABARBANEL: May I show this to the jury?
22	THE COURT: You can show that picture to the jury
23	and then we're going to take our noon recess now.
24	All right, ladies and gentlemen, I am going to ask
25	you to go to lunch now. It's now ten minutes of one. Will

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AFTERNOON SESSION

(In open court - jury present)

THE COURT: Good afternoon, Mr. Foreman, ladies and gentlemen.

VICENTE LUGO, resumed.

THE COURT: All right, you may proceed.

DIRECT EXAM NATION CONTINUED

BY MR. ABARBANEL:

MR. ABARBANEL: Would you, Mr. Reporter, please read the last question and answer back?

(Last question and answer read)

while working in the number 2 hatch after coffee break?

A It was about 25, 20 or 25 after ten.

Q About how long had you been working from the time you entered the hatch up until the time of the accident?

A Ten or 15 minutes.

Q During this period of time did you have any difficulty working?

A Yes, str.

Q What was the difficulty you had?

Breathing, it got pretty hot.

Q In the morning prior to coffee break while you worked in the hatch did you have any difficulty working?

1	mb/lf	Lugo-Direct	77
2	А	Yes, sir.	
3	Q	What was the difficulty you had?	
4	А	Sweating and breathing.	
5	C	Whey you say breathing, what was the difficu	lty
6	you had	with breathing?	
7	Α	I was I started to breathe in air hard, a	nd
8	Q	Now do you know when the number 2 hatch was	last
9	opened p	rior to the day of your accident?	
10	А	Yes, sir.	
11	Q	When was it?	
12	А	The day before.	
13	Q	Where was the ship at that time?	
14	А	In Guam.	
15	6	How long had that hatch been closed prior to	your
16	accident	?	
17	А	18 or 20 hours, sir.	
18	6	Could you have moved any of these lights?	
19		MR. DOUGHERTY: Objection, your Honor, leadi	ng.
20		THE COURT: Objection sustained.	
21	Q	With respect to the rigging of these lights,	who
22	was it t	hat decided how they were to be rigged?	
23		MR. DOUGHERTY: Objection.	
24		THE COURT: Objection sustained. Next quest	ion.
25	6	Who rigged these lights?	

- 1			
1	mb/lf	Lugo-Direct	78
2	Α	La France.	
3	Q	Would you have changed the rigging of these	lights?
4		MR. DOUGHERTY: Objection.	
5		THE COURT: Sustained.	
6	Q	Have you ever rigged lights before?	
7	А	No, sir.	
8	Q	As an ordinary seaman, is that part of your	
9	job?		
10	А	No, sir.	
11	Q	How far was the forward ladder from the .rea	where
12	you were	working?	,
13	А	18 or 20 feet.	
14	Q	The light which was located in the front of	the
15	forward	ladder, how far did that throw its light back	c?
16	A	Would you repeat that question, please?	
17		THE COURT: Do you understand the question?	
18	А	I want it repeated. I didn't hear too good,	all
19	right?		
20		THE COURT: All right, would you please, Mr.	Reporter,
21	be good	enough to repeat the question.	
22		(Question read)	
23	А	25 or 30 feet.	
24	Q	The aft ladder, how far was that ladder from	n the
25	aft end	of the aft deep tanks?	

1	mb/lf Lugo-Direct 79
2	A About 25 feet.
3	Q I show you Plaintiff's Exhibit 4, which is in evi-
4	dence, which shows the aft ladder. How far is that ladder
5	from the end of the aft end of the deep tanks?
6	MR. DOUGHERTY: If your Honor please, the question
7	has been asked and answered.
8	THE COURT: The question has been asked and answere
9	hasn't it? Objection sustained.
10	MR. ABARBANEL: I want to make sure he understands
11	which ladder I am referring to, your Honor.
12	THE COURT: Objection sustained. The question has
13	been answered.
14	In response to the last question, did you understand
15	I was referring to the aft ladder?
16	A Yes, sir.
17	Q When you said that ladder was 20 to 25 feet away,
18	from what point was that you were referring to?
19	A In front of me.
20	Q From where you were standing?
21	A From where I was standing.
22	Q And where were you standing?
23	A At the ledge in there between the forward tanks an
24	the after tanks.
25	Q What I asked for with respect to that ladder, not

1	mb/lf Lugo-Direct 80
2	as to where you were standing, but the aft ladder, where
3	the aft part of the deep tanks end, I am referring to this
4	part of the picture, Exhibit 5, which is the end of the aft
5	deep tanks, how far was that ladder from that point?
6	MR. DOUGHERTY: Again, your Honor, same objection,
7	and in addition, the question is leading.
8	THE COURT: Sustained.
9	MR. ABARBANEL: As to form, your Honor, and leading?
10	THE COURT: Beg your pardon?
11	MR. ABARBANEL: On what basis, as to form and
12	leading?
13	THE COURT: Well, it's a leading question. It's
14	a suggestive question. The question has already been answered.
15	You have covered the thing twice at least; and it seems to
16	me that's enough right there.
17	MR. ABARBANEL: May I rephrase the question, your
18	Honor?
19	THE COURT: All right, rephrase the question.
20	Go ahead. I will rule on it then.
21	MR. ABARBANEL: All right.
22	Q Mr. Lugo, look at Plaintiff's Exhibit 4 for identi-
23	fication, which shows the aft ladder. Is that correct?
24	A Yes, sir.
25	Q Does that also show the aft end of the deep aft
0.000	

1	mb/lf	Lugo-Direct	81
2	tanks wh	ere they ended?	
3	А	Yes, sir.	
4	ର	That ladder, how far is it from the aft end	of
5	the deep	tanks where they end?	
6	Α	Five or six inches.	
7		THE COURT: How much?	
8		THE WITNESS: About five or six inches.	
9		THE COURT: Five on six inches.	
10	Q	Thank you.	
11		MR. DOUGHERTY: May I see that?	
12	ବ	Could a light have been placed on that ladder	r?
13		MR. DOUGHERTY: Objection, your Honor.	
14		THE COURT: No, I will allow it.	
15	А	Answer the question?	
16	0	Yes, sir.	
17	A	Yes, sir.	
18	Q	Would that have been closer to the area where	you
19	were wor	king?	
20	A	Yes, sir.	
21	_ Q	I show you Plaintiff's Exhibit 2 for identif	cation,
22	which is	the aft port deep tank. Does this picture sh	10W
23		THE COURT: Exhibit 2 is in evidence, is it r	not?
24		MR. ABARBANEL: Yes, your Honor.	
25		THE COURT: You described it as for identific	ation.

1	mb/lf	Lugo-Direct	84
2		MR. ABARBANEL: Plaintiff's Exhibit 6.	
3		MR. DOUGHERTY: May I see it, please?	
4		MR. DOUGHERTY: No objection.	
5		MR. ABARBANEL: This is a diagram of the number	an 0
6	hatch an	d the deep tanks, your Honor. Would your Honor	
7			or
8	Tike to	see it before I show it to Mr. Lugo?	
9		THE COURT: If you please.	
		(Exhibit handed to the Court)	
10		THE COURT: All right.	
11	ବ	It may be received.	
12		(Plaintiff's Exhibit 6 received in evidence.))
13	Q	Mr. Lugo, looking down from above into the lo	wer
14	hold, is	that how the tops of the deep tanks would look	?
15	P	Yes, sir.	
16	Q	Would you mark a P in this red for the port s	ide,
17	please?		
18	A	With a P?	
19	Q	With a P; you can put it right in the tank ar	ea.
20		(The witness marked the diagram.)	
21	Q	And on the starboard or right side, mark it w	ith
22	an S.		
23		(The witness marked the diagram.)	
24	Q*	And an F in the front of it for forward.	
25		(The witness marked the diagram)	
		, , , , , , , , , , , , , , , , , , , ,	

XXX

1	mb/lf Lugo-Direct 85
2	Q And put an A in the rear of the deep tanks for
3	aft.
4	A An A?
5	Q A, yes.
6	(The witness marked the diagram.)
7	Q Would you mark with an L where you were standing
8	at the time of the accident so it stands for Lugo?
9	A With an L?
10	Q Yes.
11	(The witness marked the diagram.)
12	Q And mark with an F where Mr. LaFrance was standing
13	at the time of the accident. And mark with a P the tank
14	where Mr. Palmer was at the time of the accident.
15	(The witness marked the diagram.)
16	Q Would you show us where the light was at the foot
17	of the ladder at the forward ladder. I will draw that,
18	make that L-1 so we know what it stands for.
19	A L-1?
20	Q Yes.
21	(The witness marked the diagram.)
22	And would you mark with L-2 where at the time of
23	the accident the other light was?
24	(The witness marked the diagram.)
25	MR. ABARBANEL: Your Honor, would you like to see

	31SA
1	mb/lf Lugo-Direct 87
2	accident, how much maneuverable or standing or walking
3	space did you have?
4	MR. DOUGHERTY: I object, it's leading.
5	THE COURT: Objection sustained.
6	Q The space you were standing on at the time of the
7	accident
8	THE COURT: Describe it.
9	THE WITNESS: Describe it?
10	MR. ABARBANEL: Pardon me, sir?
11	THE COURT: I say describe the place where you were
12	standing.
13	All right, describe the place where you were standing.
14	A At the ledge, it was about eight or ten feet
15	there wide.
16	Q How wide?
17	About eight or ten feet.
18	Q Feet or -
19	MR. DOUGHERTY: Objection, leading. He said eight
20	or ten feet.
21	THE COURT: Wait a minute.
22	THE WITNESS: I'm confused. It's inches.
23	THE COURT: Now look, Mr. Abarbanel, I am not going
24	to have any breaking into the witness' testimony with suggestions
25	from you. I don't want that to happen again, you understand that

		y=	
1	mb/lf	Lugo-Direct 88	
2		MR. ABARBANEL: Yes, your Honor.	
2	Q	Would you describe the ledge or place you were	
4	standing	at the time of the accident?	
5	А	About eight or ten inches wide.	
6	Q	What direction were you facing at the time of the	
7	accident	?	
8	· A	Aft.	
9	Q	And where was the light that was at the forward	
10	ladder?		
11	Α	Forward.	
12	Q	With relation to where you were standing, was it	
13	in front	or behind you?	
14	Α	It was behing me.	
15	c,	The two tanks behind you, were they covered or	
16	uncovered	1?	
17	A	Yes, sir, they were covered.	
18	ą	The two tanks that were in front of you, were they	
19	covered o	or uncovered?	
20	Α	Uncovered.	
21	Q	How were you feeling just prior to the time you	
22	had your	accident?	
23	Α	I was feeling all right.	
24	0	At the time of your accident, how were you feeling?	
25	Α	I wasn't feeling good there.	

		25-11
1	mb/lf	Lugo-Direct 89
2	Q	In what way weren't you feeling good?
3	А	I was weak, dizzy, and
4		MR. DOUGHERTY: If your Honor please, it's already
5	been ask	ed and answered.
6		THE COURT: All right, I will allow it.
7	Q	You may continue, Mr. Lugo.
8	A	Dizzy and losing my breath.
9	Q	In your opinion, what caused you to fall?
10		MR. DOUGHERTY: Objection.
11		THE COURT: In your opinion?
12		MR. ABARBANEL: Yes.
13		MR.DOUGHERTY: Objection.
14		THE COURT: Objection sustained.
15	6	Do you know what caused you to fall?
16	А	Yes, sir.
17	Q	What was it?
18	A	Unconsciousness.
19	c	Do you know what caused you to become unconscious?
20		MR. DOUGHERTY: Objection.
21		THE COURT: Ask him if he knew. Do you know?
22		THE WITNESS: The lack of air.
23		THE COURT: All right.
24		THE WITNESS: I had difficulty breathing.
25	Q	As soon as the jury is through looking at this exhibit

	mb/lf Lugo-Cross 141
1	mb/lf Lugo-Cross 141
2	That was in 1969, correct?
3	A Correct.
4	Q Then you sailed aboard the Warrior for several
5	voyages as a deck hand, did you not?
6	A Yes, sir.
7	Q Did you always perform your work in a seaworthy
8	manner as a deck hand aboard those ships?
9	A Yes, sir.
10	Who operated the Warrior, by the way, what
11	company?
12	A Sealand.
13	Q Sealand Service Then you came back to Isthmian
14	on the Steel Worker in the early part of 1970, and you also
15	sailed as a deck hand aboard that vessel, didn't you?
16	A Yes, sir.
17	Q Then your next ship from March 2, 1970, until
18	May 22, 1970, was the Longview Victory; am I right?
19	A You are right.
20	Q Who operates that, sir, Victory Carriers?
21	A Victory Carriers.
22	Q Out of what city?
23	A San Francisco.
24	Q You were a deck hand on that ship, sir, and did you
25	

perform your work in a good fashion?

) JON	
1	mb/lf	Lugo-Cross 142	
2	А	Yes, sir.	
3	Q	Then you rejoined Isthmian again on a ship called	
4	the Stee	1 Designer in the latter part of 1970, again as a	
5	deck han	d, did you not?	
6	A	Yes, sir.	
7	Q	How many voyages did you make on that ship?	
8	А	One.	
9	Q	I suggest two voyages, sir, one coast wise and	
10	one fore	ign.	
11	А	I don't think I am very	
12	0	Excuse me?	
13	Ą	I don't remember, one or two.	
14	Q	Then did you sail again on the Warrior as a deck	
15	hand?		
lő	^	Yes, sir.	
17	ચ	Then you went to Sealand aboard the Azalea and	
18	Azalea C	ity, did you not?	
19	А	Right.	
20	u,	What department did you sail aboard that vessel?	
21	Α	The deck department.	
22	Q	What rating, sir, ordinary seaman?	
23	Α	Ordinary seaman.	
24	0	The duties of an ordinary seaman, I believe you	
25	said, ar	e painting and chipping and scraping and going alof	t

1	mb/lf Lugo-Cross 143	
2	and so forth; is that correct?	
3	A That's correct.	
4	And also working in the hatches, am I not correct?	
5	A Sometime.	
6	Q Sometimes. Well, you have worked in hatches on	
7	ships, haven't you?	
8	A Sometimes.	
9	Q That is what I am asking you. You don't always	
10	work there, do you?	
11	A No, sir.	
ľ	Sometimes you work on the deck, sometimes aloft,	
13	sometimes in the hatches, right?	
14	A That's correct.	
15	A deck hand has to work all over the ship, wherever	
16	he is assigned to do, does he not?	
17	MR. ABARBANEL: I object to the characterization	
18	"deck hand" because that may convey something to the jury	
19	which is not correct. He worked as an ordinary seaman.	
20	THE COURT: All right, call him ordinary seaman.	
21	Q Are you a deck hand, sir?	
22	A Yes, sir.	
23	THE COURT: In other words, what you are trying	
*	to say is an ordinary seaman may be a deck hand and a deck	
25	hand is an ordinary seaman; isn't that what we're talking about	?

		30SA	
1	mb/lf	Lugo-Cross	145
2	Q	On that ship?	
3	А	On that ship.	
4	Q	As a deck hand or ordinary seaman, correct?	
5	А	Right.	
6	ର	You recognize this photograph, do you not?	
7	,	Yes, sir.	
8	0	And what is this called?	
9	А	Cargo light or cluster light.	
10	c	Cargo light or cluster light, and am I fair	in
11	saying t	hat this is standard equipment which you are	accustomed
12	to work!	ng with as a seaman?	
13	А	Yes, sir.	
14	Q	You remember David LaFrance?	
15	А	Yes, sir.	
16	C	Is it not correct that David LaFrance also i	n your
17	mind had	a reputation of being a capable seaman?	
18	А	Yes, sir.	
19	Q	Do you remember Charles Palmer?	
20	Α	Yes, sir.	
21	Q	And am I not correct in saying that in your	mind
22	Charles	Palmer was also a capable seaman?	
23	A	Yes, sir.	
24	Q	The tanks in which you were hurt had carried	a cargo
25	of lube	oil, is that correct?	

1	mb/li	Lugo-Cross	146
2	A	Yes, sir.	
3	Q	And did you tell us that as best you can re-	call,
4	it was	loaded where, in the United States?	
5	A	Yes, sir.	
6	0	In Louisiana?	
7	A	Yes, sir.	
8	Q	And then it was taken across the ocean and o	iischarge
9	in India	a, is that so?	
10	А	Yes, sir.	
11	ર	Calcutta?	
12	А	Bombay.	
13	Q	Bombay. After it was discharged, a time cam	e when
14	the tank	was cleaned by a shore gang, is that right?	
15	Α	Yes, sir.	
16	Ç	And where was the tank cleaned by a shore ga	ng?
17	А	Calcutta.	
18	Q	Do you remember approximately what date?	
19	А	No, sir.	
20	C	Did you know at that time what cargo was goi	ng to be
21	taken in	to those deep tanks at a later date?	
22	А	No, sir.	
23	Q	The lube oil was carried in the deep tanks,	is that
24	right?		
25	А	Yes, sir.	

1	mb/lf	Lugo-Cross	147
2	Q	It was not carried in the broader or large	r hatch
3	area when	re you were working at the time you fell, w	as it?
4	Α	No, sir.	
5	Q	Do you recall what cargo was carried in th	at broader
6	larger a	rea where you were working when you fell pr	ior to
.	your acc	1dent?	
8	А	No, sir.	
9	ಎ	What was the last port before you got hurt?	
10	A	Saipan.	
11	૨	Was it Guam?	
12	А	Yes, sir.	
13	ର	So Saipan	
14	А	No, Saipan. I was taken to the hospital i	n Guam
15	but the	last port was at Saipan.	
16	Q	The last port was Saipan?	
17	А	Yes, sir.	
18	હ	What hatch were you working in?	
19	А	Number 2 hatch.	
20	ଜ	The number 2 hatch was open the day before	your
21	accident	, was it not?	
22	A	Yes, sir.	
23	Q	It was open all day, was it not?	
24	А	Yes, sir.	
25	Q	And by "open," I mean wide open up at the t	op,

2 | correct?

- A Correct.
- Now were you in court -- you were in court during the opening addresses by both attorneys to the jury, and you heard me use as an analogy that this entire room would be the hatch of the ship and a square of that ceiling would be the open square of the hatch. You heard that. Is that basically a fair, correct analogy to use?
- A If you explain it to me again.
- Q Yes, we assume that the walls of this courtroom represent the bulkhead or the skin or the side of the ship, would it be roughly correct or basically correct if we point to a portion of the ceiling as representing the square of the hatch?

A Yes, sir.

Who is it who knows what the next cargo will be to be put into those deep tanks? It would be the ship's officers, would it not?

A Yes, sir.

MR. ABARBANEL: I will object to the question, your Honor.

THE COURT: If he knows.

You do know and it would be the ship's officer?

MR. ABARBANEL: I object. He is testifying, he is not

1	mb/lf	Lugo-Cross	149
2	asking.		
3	Q	I am sorry. Do you know?	
4	A	Ship mate or any other of the mates.	
5	Q	One of the mates?	
6	А	One of the mates.	
7	Q	These tanks sometimes carry cargo that is no	t a
8	liquid,	don't they?	
9	A	Yes.	
10	Q	In other words, they sometin 3 carry dry carg	0?
11	Α	Yes, sir.	
12	Q	After the oil was discharged, as a matter of	fact,
13	this was	dry cargo put into those tanks, wasn't this?	
14		MR. ABARBANEL: I will object unless he esta	blishes
15	whether	he knows or not.	
16		THE COURT: I will allow the question.	
17	Q	Do you recall?	
18	А	Yes, sir.	
19	C	Do you remember what the dry cargo was that	was put
20	into the	e tanks?	
21	٨	Cars and	
22	Q	Jeeps?	
23	A	Jeeps and	
24		THE COURT: What was that answer?	
25	A	I am not	

Is that correct?

THE COURT: Will you please go ahead, Mr. Dougherty.

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THE COURT: Yes, I think that is an objectionable question. Reframe it.

Q Do you recall after the oil was discharged, the vessel picked up some military retrograde cargo from Vietnam that included jeeps and trucks?

A Yes, sir.

Where was that Vietnam military retrograde cargo unloaded?

A Somewhere in Taiwan.

Q And the reason that the boards were put down were so that that cargo could be loaded on top of those boards, is that right?

A I don't know.

Q But the boards were put down just before the military retrograde cargo was loaded into the ship, were they not?

MR. ABARBANEL: Objection, this is repetitious.

I say I don't know. I don't work on hatches.

Who put the boards down? Q

I don't know.

You are acquainted with, as a seaman, the old phrase "batten down the hatches," aren't you?

Yes, sir. A

What does that mean?

I hear the word but I don't know what it means.

1	mb/lf	Lugo-Cross 153
2	e	You don't know what "batten down the hatches" means?
3	А	No, sir.
4	Q	When a ship sails to go across the Pacific Ocean,
5	does she	usually batten down the hatches?
6		MR. ABARBANEL: Your Honor, I object to the question.
7		THE COURT: He said he didn't know what the phrase
8	meant.	
9		MR. DOUGHERTY: He might know in this context,
10	your Hone	or.
11		THE COURT: Sustained. Next question.
12	Q	Does she close up the hatches?
13	A	Sometimes.
14	Q	What does it depend on?
15	А	On the weather.
16	Q	What about the weather?
17	А	If the next port is not too far and the weather
18	is good	and they have to get the ship out in a hurry, they
19	don't bo	ther to close the batches.
20	Q	Do you have any recollection whether this vessel
21	had ship	ped out in a hurry at her last port before your
22	accident	?
23	A	No, sir.
24	- Q	If the vessel is not going to reach her next port
25	soon, an	d if it's going to be awhile between ports, then they

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usually do cover up or batten down the hatches, don't they?

MR. ABARBANEL: I will object to the form of the question, because he uses the word "batten" again, and he said he did not understand it.

- All right, I will withdraw that. Cover up.
- A That's up to the chief mate there or the captain.

 It's their decision.
- Q It's their decision, is it not, because they are trained in the matters of navigation and weather and running a ship to make that decision; am I not correct?
 - A I am not a captain.

MR. ABARBANEL: I object to the form of the question.

- A I am not a former officer.
- Q Have you ever studied to become an officer?
- A No, sir.
- Q So I take it then that you would leave it to their judgment and to their skill, namely, a decision whether to close up the hatches, will you not?
- Right or wrong, I leave it to them.
- Q You leave it to them because they have had the training and the experience to make such a decision?

MR. ABARBANEL: Objection, your Honor.

THE COURT: Sustained.

mb/lf	Lugo-Cross 1	55
Q	How far was the next port?	
А	I believe it was five days away.	
Q	What was the weather like on the day you saile	d?
Α	Good.	
Q	The sea was calm?	
А	Yes, sir.	
Q	Are you sure?	
Δ	I'm sure there was no pitching or rolling.	
Q	It was not pitching or rolling? And is it your	r
contenti	on that when the sea is calm, the hatch can be	
left ope	n?	
А	I told you before, I am not an officer. I am	
not an e	xpert on that.	
Q	But you are sure the sea was calm?	
А	Yes, sir.	
વ	What does that term mean to a seaman when you	
say the	sea was calm?	
	MR. ABARBANEL: I will object as to what it mes	ans to
a seaman	. What it means to Mr. Lugo I can understand.	
Q	You are a seaman, sir. What does it mean to yo	ou?
	THE COURT: Speak to Mr. Lugo. Don't put in the	ne
interpret	tations. Ask the questions.	
	MR. DOUGHERTY: Yes.	
c	What does it mean to you?	
	A Q A Q A Q contenti left ope A not an e Q A say the a seaman Q interpre	Q How far was the next port? A I believe it was five days away. Q What was the weather like on the day you sailed a Good. Q The sea was calm? A Yes, sir. Q Are you sure? A I'm sure there was no pitching or rolling. Q It was not pitching or rolling? And is it your contention that when the sea is calm, the hatch can be left open? A I told you before, I am not an officer. I am not an expert on that. Q But you are sure the sea was calm? A Yes, sir. Q What does that term mean to a seaman when you say the sea was calm? MR. ABARBANEL: I will object as to what it means a seaman. What it means to Mr. Lugo I can understand. Q You are a seaman, sir. What does it mean to you THE COURT: Speak to Mr. Lugo. Don't put in the interpretations. Ask the questions.

1	mb/lf	Lugo-Cross 156
2	А	We were not taking water over the sides or raining.
3	Q	The vessel was not pitching or rolling?
4		MR. ABARBANEL: I will object, your Honor, this
5	has been	covered. It's repetitious.
6		THE COURT: By you but not by him.
7		MR. ABARBANEL: No, sir, by Mr. Dougherty.
8		THE COURT: Overruled.
9	c	The vessel was not pitching or rolling?
10	A	No, sir.
11	Q	Do you remember the weather the next day?
12		MR. ABARBANEL: Your Honor, he was not aboard the
13	vessel th	ne next day. I object.
14	Δ	The next day I was in the hospital.
15	c	You worked the next morning, did you not?
16	А	No, sir, or I don't remember.
17	Q	You worked until the time of your accident?
18		MR. ABARBANEL: Your Honor, I object. This is con-
19	fusing.	
20		THE COURT: You are completely confused now.
21		MR. DOUGHER'Y: They sailed the day previously.
22		MR. ABARBANEL: What day are you talking about?
23		THE COURT: All right, make it clear what day you are
24	talking a	about and then go on from there.
25	0	Talking about June 1st.

	JUSA
1	mb/lf Lugo-Cross 157
2	THE COURT: Talking about June 1st?
3	MR. DOUGHERTY: Yes.
4	A Yes, it was calm, like I say.
5	Q You understood my previous questions to be the day
6	before that you sailed, did you not, May 31st?
7	A Yes. I understand the question.
8	So you would agree, would you not, that whether or
9	not to close up the hatch, one of the big things that the
10	ship's officers had to take into consideration, was the
11	weather that they might encounter?
12	MR. ABARBANEL: Objection, your Honor.
13	MR. DOUGHERTY: Over the next five days?
14	THE COURT: No, objection sustained.
15	Q How are themain deck hatches covered up?
16	A With pontoons, ste 1 pontoons and tarpaulins.
17	Q And what?
18	A Tarpaulins.
19	How big are these steel pontoons, about from here
20	to his Honor in length?
21	A About the size of this desk.
22	THE COURT: Of this bench?
23	THE WITNESS: The bench.
24	f About that long?
25	A Something like that.

1	mb/lf	Lugo-Cross 158
2	Q	How wide is the main deck hatch?
3	A	No, no wide, I am talking about the wide. The
4	long is	the length of the hatch; the whole length. I'd
5	say abou	t
6		THE COURT: Right to the wall over there? Is that
7	what you	mean?
8		THE WITNESS: About from here to the wall.
9		THE COURT: To the wall.
10	Q	And about as wide as his Honor's bench?
11	А	Something like that.
12	Q	Made of steel?
13	А	Yes, sir.
14	Q	Any idea what they weigh?
15	A	No, sir.
16	c	It is correct to say, however, that the men cannot
17	lift them	n, rather you need machinery to lift it, don't you?
18	A	Yes, sir.
19	Q	What machinery do you use, the ship's booms and cranes
20	and winch	es?
21	Α	Yes, sir.
22	Q	Electrical power to move them?
23	А	Yes, sir.
24	Q	A ship's boom is something that is like this, it
25	would loo	k like a long steel metal cylinder that points up

1	mb/lf	Lugo-Cross		159
2	in the air	right?		
3	A R	ght.		
4	Q Ha	ve you heard the ph	rase "to cradle th	ne booms"?
5	A Ye	s, sir.		
6	Q Ar	d that means that w	hen the ship goes	to sea,
7	the booms an	e put down into the	ir cradle?	
8	A No	t necessarily.		
9	C Bu	t usually, am I cor	rect?	
.0	A Us	ually.		
1	Q Fa	rdon me?		
2	A Us	ually but not neces	sarily.	
3	e Th	at is called cradli	ng the boom?	
4	A Ri	ght.		
.5	Q Bu	t in order to get t	he booms to lift t	hese heavy
6	pontoons, t	he boom has to be r	aised up in the ai	r, does
7	1t not?			
.8	A Ye	s, sir.		
9	Q Ho	w was it raised up	in the air, by po	ower, by
0	machinery?			
1	A Po	wer.		
2	Q By	machine power?		
3	A Ye	5 •		
14	с Но	w many seamen does	it ordinarily take	to raise
25	the booms up	in the air and get	them ready if the	y need to

	53SA
1	mb/lf Lugo-Cross 160
2	lift one of these pontoons, how many men have to do that?
3	A Six or seven.
4	Q All deck department men?
5	The whole deck department, not counting the men
6	on watch.
7	Q After the boom is put way up in the air
8	incidentally, the boom would stick up higher than the ceiling
9	in this courtroom, would it not?
10	A Yes.
11	Q And then down off that comes wire cables; is that
12	right?
13	A Yes, sir.
14	Q And then at the end of the wire cable suspended is
15	this pontoon, am I correct?
16	A Yes, sir.
17	Q And, of course, that pontoon can be made to
18	swing, can't it, as it is suspended from the tops of the
19	booms?
20	A If the ship is rolling, yes.
21	If the ship is rolling or pitching, the pontoon
22	will swing back and forth, won't it?
23	A Yes.
24	Q And am I correct in saying that that pontoon could
25	

weigh several tons?

		And the second	
1	mb/lf	Lugo-Cross	161
2	A Y	es, Jir.	
3	Q S	o whether or not to raise the booms, suspen	d cables
4	from the b	ooms, and lift one of these heavy pontoons	off while
5	the vessel	is at sea is a decision to be made by the	ship's
6	officers,	correct, sir?	
7	M	R. ABARBANEL: Objection, your Honor.	
8	Т	HE COURT: I will allow it if he knows.	
9	Q I	s that a decision to be made by the ship's	officers?
10	Y A	es, sir.	
11	O T	hat morning you received orders to do some	work
12	in the num	ber 2 hatch, correct?	
13	Y 4	es, sir.	
14	Q A	nd three of you went down into the number 2	hatch,
15	you and Pa	lmer and LaFrance?	
16	Y A	es, sir.	
17	Q A	nd prior to the coffee break, you were work	ing in
18	the after	port or the after starboard tank, which one	?
19	A A	fter port.	
20	Q A	nd on a ship, port side means the left side	as
21	you are fa	cing the front of the vessel?	
22	A Y	es.	
23	Q A	nd starboard means the right side?	
24	A Y	es, sir.	
25	Q M	r. Palmer was down inside the port deep tar	ks, am I
and the second second			

		<i>>></i>	
1	mb/10	Lugo-Cross 16	2
2	right?		
3	А	No, sir.	
4	Q	Who was?	
5	А	When I had the accident?	
6	- Q	No, no, when you first went down prior to the co	offee
7	break.		
8	А	Palmer was in there, in the port tank.	
9	Q	Palmer was in there?	
10	А	Yes, sir.	
11	Q	And were you down in that tank?	
12	А	Yes, sir.	
13	Q	You were. What did you do down in that tank?	
14	А	I was assisting LaFrance and Palmer.	
15	Q	I know that but to do what?	
16	А	To remove the -	
17	· Q	Duct plates?	
18	А	Duct plates.	
19	Q	Had you been in the number 2 hatch during that	
20	voyage?	Had you been in the number 2 hatch previous to the	nis
21	date of	June 1st?	
22	А	Yes, sir.	
23	c	Do you recall on what date?	
24	Α	No, sir.	
25	ର	Would it help us to imagine the number 2 lower	tween

	mb/lf Lugo-Cross 164
1	mb/lf Lugo-Cross 164
2	A No, sir.
3	Q You don't know any complaint by Mr. Palmer about
4	the ventilation, do you?
5	A No, sir.
6	Q And you didn't make any complaints about the light-
7	ing, did you?
8	A I leave it to the judgment. They know, they have
9	more experience than I have.
10	I will ask the question again: you didn't make
11	any complaint about the lighting, did you?
12	A No, sir. Nobody else complained. Why should I?
13	Q You didn't make any complaints?
14	MR. AP ANEL: I object, your Honor. It's been
15	answered in his way.
16	MR. DOUGHERTY: What's the objection?
17	THE COURT: I don't know what the objection is.
18	MR. ABARBANEL: He is repeating the same question.
19	THE COURT: I don't believe it was the same question
20	If it is the same question, obviously it's not going to be
21	asked a second time.
22	And you didn't make any complaints, did you, sir,
23	about the ventilation?
24	A I answered before, no.
25	Q Then you went on your coffee break, am I right?

1	mb/lf	Lugo-Cross 165
2	Α	You are right.
3	Q	And was it at this time that you went to your room
4	and chan	ged your shirt?
5	Α	Yes, sir.
6	Q	Or was it earlier that day?
7	А	No, it was at that time.
8	Q	At that time you went to the room and changed your
9	shirt.	
10	А	Yes.
11	Q	All right. Then you went to the mess hal) for
12	coffee?	
13	А	Correct.
14	ର	And you sat in the mess hall with Palmer and LaFrance
15	didn't y	ou?
16	Α	No, sir.
17	Q	You had coffee with Palmer and LaFrance?
18	А	No, sir.
19		MR. ABARBANEL: I will object.
20	А	I had coffee with the whole crew. We were talking
21	about co	ming home and things like that.
22	Q	And the conversation
23	A	Not with LaFrance in particular.
24	Q	Excuse me?
25	A	Not with LaFrance and Palmer in particular. There

1	mb/1	lf	Lugo-Cross	167
2		Q	What is a plank, a piece of wood?	
3		Α.	Yes, sir.	
4		Q	About how big?	
5		Α	About six by twelve, by ten. Ten feet lo	ng or
6	abou	it for	ur feet wide, something like that.	
7		Q	Let me see just ten feet long, maybe from	here to
8	the	end	of the rail here as I am indicating?	
9		A	No, sir.	
10		Q	Longer?	
11		Α	I'd say about from here to the wall.	
12		0	I am asking about the planks.	
13		Α	Yes, sir, he length of the planks, right	?
14		Q	Were they that long?	
15		Α	They were that long, yes. You can see on	the pictures
16	one	of th	ne exhibits.	
17		Q	One of the other pictures.	
18			All right, Palmer was down in the tank, c	orrect?
19		Α	Yes, sir.	
20		Q	And you were handing these planks to LaFr	ance?
21		Α	LaFrance used to lift one end and I lifte	d the other
22	end	and w	we pass it to Palmer.	4
23		Q	And you'd slide it down the edge of the to	ank?
24		А	Yes, sir.	
25		Q	And then who would be the last one to hand	dle it,

1	mb/lf	Lugo-Cross	168
2	LaFrance	?	
3	А	La France.	
4	Q	Where did you get these planks from?	
5	А	I don't remember.	
6	Q	Over or under the wing?	
7	А	I don't remember that.	
8	Q	You had to go get them from some place in the	nat
9	hatch, t	hough, didn't you?	
10	А	I bel'eve they were piled up in the top of t	the
11	covers.		
12	6	On top of what?	
13	А	On top of the covers or the forward tanks.	
14	Q	The two forward tanks were covered, weren't	they?
15	А	Yes, sir.	
16	Q	They were covered with tank tops, what you o	all
17	tank top	s, correct?	
18	Д	Yes, sir.	
19	Q	How big or how heavy are these tank tops? W	lhat are
20	they mad	e of?	
22	А	Steel. I have no idea how heavy they are.	
23	Q	They are very heavy, though, are they not?	
24	А	Oh, yes.	
25	ର	They are so heavy in fact that men cannot li	ft them
	but once	again you need equipment or machinery to life	t them,

1	mb/lf	Lugo-Cross	169
2	correct?		
3	Α	Yes, sir.	
4	Q	So that when they were taken off, the after	r tanks
5	had thei	r tank tops off, they were open, right?	
6	Д	Right.	
7	c	Where were those tank tops put, off to the	side?
8	А	Yes, sir.	
9	Q	So there was room off to the side for thos	e,
10	correct?		
11	А	Yes, sir.	
12	0	And then am I not correct in saying that t	hose
13	tank top	s had to be lashed down or tied up with som	ne rope?
14	A	Yes, sir.	
15	ç	And the reason for that is that when the s	hip
16	went to	sea, they didn't want these tank tops sliding	ng steel on
17	steel, s	kidding around down there, right?	
18	А	Right.	
19	Q	So they were tied off to the side?	
20	Δ	Yes, sir.	
21	Q	And the forward tank tops though were in p	place and
22	on, is the	hat right?	
23	A	Yes.	
24	Q	Therefore, you could back right acros: the	forward
25	tank top	s, could you not?	

1	mb/lf Lugo-Cross 170
2	A If I had to, yes.
3	I mean they are solid iron, they are solid steel,
4	they would certainly without any question at all they would
5	support you, wouldn't they?
6	A Repeat that question again?
7	Yes, they were made or iron or steel?
8	Λ Yes, sir.
9	And there is no question that they would support
10	you and a hundred men? You would walk right across them?
11	A Yes, sir.
12	Q And it's your recollection that the boards or
13	planks were standing on top of those tank tops?
14	MR. ABARBANEL: I object. He has already testified
15	It's repetition.
16	Which way were you facing just before you fell?
17	A I was facing art.
18	Q Facing aft?
19	A Yes, sar.
20	Q That is toward the back of the ship?
21	A Right.
22	Q So that behind you, you had the closed tank tops,
23	is that right?
24	A Yes, sir.
25	Q Those tank tops are raised up off the deck a little

1	mb/lf	Lugo-Cross	171
2	bit, are	they not?	
3	А	Yes, sir.	
4	Q	Can you show me with your hands about ho	w far off
5	the deck	they are raised?	
6	А	I think it's about this high (indicating	ng).
7	Q	Indicating six to eight inches, counsel	.?
8		MR. ABARBANEL: I'd say closer to eight	, maybe ten
9	inches.		
10		MR. DOUGHERTY: Fine, fine.	
11	Q	Is it not a fact, sir, that just before	you fell,
12	if you w	ere not feeling well, there is no reason	there was
13	no dange	r, no open space behind you, is that not	true?
14	А	Yes, sir.	
15	Q	That's true. All right. There was no	reason that
16	had anyt	hing to do with the structure of the shi	p why you
17	couldn't	have just sat down (indicating sitting d	own backwards
18	on top o	f that tank top, was there?	
19		MR. ABARBANEL: I object to the form of	the question.
20		THE COURT: Overruled.	
21	,	When you are losing your consciousness,	you don't
22	have tha	t ability to think or look for you ju	st
23		MR. DOUGHERTY: I move to strike it.	
24		THE COURT: I'll allow it to stand.	
25	Q	Was there any reason, any physical reas	on, anything

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immediately preceding it reading --

MR. DOUGHERTY: The issue is the sentence or sc

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In the wheel house?

	OOSA
1	mb/lf Lugo-Cross 257
2	· A Yes.
3	Q You wore glasses there. But you did not have them
4	on at the time of the accident?
5	A No, sir.
6	MR. ABARBANEL: I will object. This is repetitious.
7	THE COURT: Overruled.
8	Q Mr. Lugo, let me show you a paper and ask you if
9	this is your signature.
10	A Yes, sir.
11	THE COURT: Have you seen this?
12	MR. ABARBANEL: No, I have not.
13	MR. DOUGHERTY: I will mark this if I may.
14	THE COURT: Mark it and show it to Mr. Abarbanel.
15	(Defendant's Exhibit A marked for identification.)
16	MR. ABARBANEL: This is a group of papers; and
17	you are referring to the top page?
18	MR. DOUGHERTY: Top page.
19	Now I will ask you if your signature appears also
20	on the second page of this pack of papers. Yes?
21	A Yes.
22	Q And also on the third, fourth and fifth final
23	pages? Will you look at those three pages, please?
24	A . Looks like my signature but I don't remember signing
25	any of these papers before.

XXX

		69SA	
1	mb/lf	Lugo-Cross	258
2	4	But they do look like your signatures?	
3	A	They do.	
4	Q	Have you looked at those papers carefully?	
5	Α	Yes.	
6	Q	Yes?	
7	А	Yes.	
8	- Q	Are you a member of the	
9		MR. ABARBANEL: Your Honor, may I see all of	them?
10	I only 1	looked at the top one. I didn't know Mr. Doughe	erty
11	was goin	refer to them all.	
12	Q	Are you a member of the seafarers' welfare pla	an?
13	А	I believe so.	
14	c	You are not sure?	
15	Α	I am not sure. I never applied for that.	
16	Q	Did you periodically go to the seafarers' well	fare
17	plan thr	rough the years 1968, '69, '70, '71 for physical	l
18	examinat	ons?	
19	А	Yes, sir.	
20	Q	Where is that located, the seafarers' welfare	
21	plan?		
22	Λ	I don't know the address exactly. I know it's	
23	across -		
24		THE COURT: Where is it roughly, Mr. Lugo?	
25		THE WITNESS: Across the union hall; somewhere	around

1	mb/1f	Lugo-Cross 259	9
2	there.		
3	Q	During those physical examinations, they would a	ask
4	you abou	at your medical history and your prior conditions,	,
5	wouldn'	they?	
6	А	No, sir.	
7	Q	They wouldn't? Do you deny that they would?	
8	A	No, I just	
9		MR. ABARBANEL: I object, your Honor.	
10	Α	They just give me the physical and they don't	
11	ask no q	questions.	
12	Q	They don't ask you any questions?	
13	A	No, sir.	
14	(Do they examine you?	
15	А	Yes, sir.	
16	Q	Do they examine your eyes?	
17	A	Yes, sir.	
18	Q	Did they at any time tell you that you had defect	tive
19	vision?		
20	Α	Yes, sir.	
21	Q	Did they tell you that that defective vision sho	uld
22	be corre	cted?	
23	Α	Yes, sir.	
24		MR. DOUGHERTY: Your Honor, I offer in evidence	
25	the reco	ords of the Seafarers' Welfare Plan on Vicente Lug	0

	(ZSA
1	mb/lr Lugo-Cross 262
2	of 1968 in Vietnam?
3	A I told you every time we go to the Far East we
4	supposed to take medication for malaria.
5	Mr. Lugo, do you recall what your vision was in
6	1967? Did you have good vision in 1967?
7	A Not exactly.
8	MR. ABARBANEL: I object now. There is two questions
9	I would like to know which question, what Mr. Dougherty is
10	putting to the witness.
11	THE COURT: Yes, quite right.
12	Q Did you have good vision, Mr. Lugo, in 1967?
13	A Better than now, yes.
14	Q Do you recall what your vision was at the time
15	you were examined on April 15, 1968, at this clinic?
16	A They prescribed glasses for me. The condition I
17	don't know because
18	Q Do you recall - did you get those glasses?
19	A Yes, sir.
20	Q Do you recall what your vision was when you were
21	examined at the clinic on April 25, 1969?
22	A No, sir.
23	Do you recall whether at that time on April 25,
24	1969, you had glasses?
25	A Yes, sir.

Yes, sir.

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1 Were any recommendations made to you about your 2 3 eyesight on April 25, 1969? A Just glasses, not recommendation of any kind. 4 Q Mr. Lugo, on June 2, 1970, at the clinic, do you 5

recall whether you were tested with glasses or not? MR. ABARBANEL: Your Honor, I object, this is repetitious. He said he had an eye examination each time he

THE COURT: Overruled.

A Yes, sir.

went there.

Did you have what is called corrected vision, sir, on June 2, 1970? In other words, did you have glasses or that time when you took the eye tests at the clinic on June 2, 1970?

MR. ABARBANEL: Objection, there are two questions in that one. I would appreciate if if Mr. Dougherty would separate it.

THE COURT: Yes, I think that's right. Try and confine yourself to one subject matter, Mr. Dougherty, with each question.

MR. DOUGHERTY: Yes, your Honor.

On June 2, 1970, do you recall having your eyesight tested at the union clinic?

A Yes, sir.

	1 7 7 7 7 7
1	mb/lf Lugo-Cross 264
2	Q Were your eyes tested first without glasses?
3	^ I don't remember.
4	Do you remember whether you had any defective
5	vision on that date without glasses?
6	A Yes, sir.
7	Did you have defective vision without glasses?
8	A Yes, sir, that's why I went over there, to get
9	glasses.
10	Excuse me?
11	A That's the reason for me to go over there. I
12	needed glasses.
13	Q Did you have glasses on that day?
14	A Yes, sir.
15	Were any recommendations made to you about correct-
16	ing your vision on that date?
17	A Just change the glasses.
18	Q Do you have any idea what your uncorrected vision was?
19	A No, sir.
20	In June, on June 2nd of 1970?
21	A No, sir.
22	Q Can you give me any numbers, such as 20 over 40 or
23	20 over anything?
24	MR. ABARBANEL: Objection, your Honor, he said he
25	does not know.

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		THE	COURT:	Ι	will	sustain	an	objection	to	that	ques
-	tion.	Next	uestion.								

- Can you give me adjectives? Can you describe your eyesight without glasses, Mr. Lugo, on June 2nd of 1970?
 - A I had no idea. I told you before.
- On June 3rd of 1971, were your eyes tested without glasses?
 - A Yes, sir.
 - Do you recall what your vision was without glasses?
- A No, sir.
- Q Do you recall whether your vision in your right eye was 20 over 100 without glasses?
- MR. ABARBANEL: Objection, your Honor, he already said he doesn't know.
 - MR. DOUGHERTY: I can refresh his recollection.
 - THE COURT: Overruled.
- Q Do you recall whether the vision in your right eye on June 3, 1971, was 20 over 100?
- A No, sir. The doctor never told me that.
- MR. ABARBANEL: Your Honor, may I have an instruction that the question that Mr. Dougherty is asking Mr. Lugo is not evidence.
 - THE COURT: Is not what?
 - MR. ABARBANEL: Evidence, your Honor.

1	mb/lf lugo-Cross 266
2	THE COURT: Objection overruled. Next question.
3	Q Do you recall whether the vision in your left eye,
4	Mr. Lugo, on that date of June 3, 1971, without glasses,
5	was 20 over 40?
6	A No, sir.
7	You did have glasses on June 3, '71, did you?
8	A Yes, sir.
9	Do you know what your vision with glasses was in
10	your right eye on that date?
11	A With glasses? It was good.
12	Q Was 1t 20/20?
13	A I am not a doctor. I can't tell you that.
14	Q Were any recommendations made to you about defective
15	vision and correcting your defective vision on June 3, 1971?
16	No, sir, just
17	Q Fardon?
18	A No, sir, just change the prescription.
19	No recommendation?
20	A No recommendation.
21	Other than that. All right.
22	What date, sir, did you sail on the Longview
23	Victory?
24	A That happened long time ago. I don't remember.
25	Q Were you on the Longview Victory in April of 1970,
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1	mb/lf Lugo-Cross 272	
2	Mr. Lugo, you recall that this is the kind of typic	al
3	shipboard cargo light or cluster light, is that right?	
4	A Yes, sir.	
5	And, incidentally, you don't know the wattage of	
6	the cargo lights on June 1, 1972, do you?	
7	A No, sir.	
8	MR. ABARBANEL: I will object to the form of the	
9	question.	
10	THE COURT: Overruled.	
11	What was your answer?	
12	A No, sir.	
13	THE COURT: What exhibit number are you holding?	
14	MR. DOUGHERTY: This is Plaintiff's number 1, your	
15	Honor.	
16	Q About how much do these weigh?	
17	A You mean the	
18	The light, how much does it weigh, approximately?	
19	Can a man pick it up?	
20	A Oh, yes.	
21	Q Easily?	
22	A Very easily.	
23	When they are put in their place, they are not	
24	nailed or screwed in place, are they? In other words, you	
25	can just lift them up?	

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tank top, the closed tank tops, at the forward end?

A Yes, sir, what was the question again?

MR. ABARBANEL: Objection, your Honor.

the time that you handed the plank to Mr. LaFrance, and the

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- 2 time that you began to feel dizzy?
 - A That I can't tell you.
 - About how many planks did you hand down altogether that morning before the accident?
 - A I don't remember how many.

MR. ABARBANEL: I object if he is referring to the time after coffee break or before coffee break?

THE COURT: Yes, I think you better distinguish.

- Q After coffee break about how many planks did you hand down?
- A I don't remember. They sent me down there to work, not to count the planks.
- Q How many planks were neded down in the tank?
- A I don't know how many he needed. If he needed two, I handed him two. If he needed four, I had to give him four. I don't know how many was needed or how many I give him.
- Q And you can't tell me how much time went by between the last time you handed LaFrance the plank and the time you started feeling --
- A No, sir.
- All right. Now, sir, you do agree, do you not, that in the event that the vessel might expect bad weather, it would be perfectly proper to close or batten down the main deck?

THE COURT: All right.

1	mb/lf Lugo-Cross 278
2	What was the width of the area or the ledge on
3	which you were standing?
4	A About eight inches.
5	Q What was the approximate width of the space between
6	the two tanks that were opened?
7	MR. ABARBANEL: What two tanks, your Honor?
8	MR. DOUGHERTY: There were only two that were
9	open.
10	THE COURT: Well, all right.
11	MR. ABARBANEL: At what point then?
12	MR. DOUGHERTY: At the time of the accident.
13	THE COURT: You are talking about the aft tanks, ar
14	you?
15	C Talking about the aft tanks.
16	A You mean the walking space?
17	Q Yes, how wide was that between the tanks? May
18	I see Exhibit 2?
19	MR. ABARBANEL: Wait a minute. Let him answer
20	your question.
21	THE COURT: Yes, he was just asked a question.
22	Do you remember how wide the space was between
23	the two aft tanks that were open?
24	THE WITNESS: About eight inches, I said before.
25	THE COURT: About eight inches. All right, next

1	mb/lf Lugo-Cross
2	question.
3	Q Do you recall testifying previously, Mr. Lugo,
4	and being asked, "On what were you standing at the time?" and
5	giving this answer, sir: "You have a space about two feet
6	wide between the tanks."
7	A Might be but it's not true. You, yourself know
8	it's that space is not that side.
9	Q I know? I am asking you, didn't you testify
10	that it was approximately two feet wide?
11	A Could be that I said that by mistake or but
12	you, yourself, know that's not time.
13	MR. DOUGHERTY: May I see exhibits 2 and 3, please?
14	Ar. Lugo, I show you Exhibit 3; would you look at
15	this carefully and tell me what open tank that illustrates
16	In that hatch?
17	A Looks like the starboard tank.
18	Q The aft starboard tank?
19	A Yes, sir.
20	And there is a picture of someone in this photograph
21	standing there. Is that approximately where you were standing
22	at the time of the accident?
23	A Yes, sir. Just about.
24	Q Just about where you were standing at the time of
25	the accident?

A Yes.

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THE COURT: Now look, I do not want you to do that,

Mr. Dougherty. When you ask a question and get an answer, don't repeat the answer. Ask the next question, please.

MR. DOUGHERTY: All right, your Honor.

MR. ABARBANEL: May I see that, please?

Is it not a fact, Mr. Lugo, that directly behind you there is unlimited solid deck space on which you could stand or walk?

A Yes, sir.

Thank you. Or behind you there is unlimited deck space on which you could back up or sit down; is that not correct?

MR. ABARBANEL: Objection, your Honor.

THE COURT: Overruled.

A It 's correct.

Q Y u did not sip or trip on anything, did you, sir?

A Tanswered that a hundred times before, no. The answer is no.

And you were not walking around at the time of the accident, were you, Mr. Lugo?

A No. sir.

Q Now the one light was in the tank and you testified the other was at the forward end of the hatch?

1	mb/lf Lugo-Cross 290
2	that there were no salt tablets available for you to take?
3	A Yes, sir.
4	
5	Q And then you testified yesterday that you did tak
3	salt tablets, did you not?
6	A That was the question, you took salt. I said yes
7	Q Yesterday did you testify that you did take salt
8	tablets?
9	A Maybe, but there were no salt tablets there, and
10	the chief mate testified to that. He told me to use common
11	salt.
12	Common table salt?
13	A Common table salt.
14	Q Mr. Lugo, did you testify yesterday that you took
15	salt tablets?
16	A Yes.
17	Q Did you know where the switches were for the
18	ventilators?
19	A No, sir.
20	Did you ever ask where the switches were for the
21	ventilators?
22	A No, sir.
23	Q You have been a member of another union, have you
24	not, under which you have accumulated time in addition to
25	the Seafarers' International?

			OISA			
1	mb/lf		Lugo-Red	irect		303
2		THE COURT:	An AB,	I say ar	able-bodied se	aman.
3		THE WITNES	S: Yes,	sir.		
4		THE COURT:	Did yo	u ever as	k the able-bodi	led seaman
5	to move t	he light?				
6		THE WITNES	S: No,	sir.		
7		THE COURT:	You di	dn't say	anything to the	em about
8	1t?					
9		THE WITNES	S: No,	sir.		
15		THE COURT:	You did	dn't try	to move the lig	tht yourself
11		THE WITNES	S: No,	sir.		
12		THE COURT:	All righ	nt.		
13		MR. ABARBA	NEL: You	ur Honor,	even though th	is may
14	be repeti	tious, I t	nink it's	pertine	nt.	
15	Ç	Could you	move that	t light o	n your own with	out
16	any author	rity?				
17	1	MR. DOUGHE	RTY: I	object.		
18	,	THE COURT:	Object	ion susta	ined. That's b	een
19	covered.					
20	Q I	At the time	of the	accident	, you were faci	ng in what
21	direction	?				
22	Α 1	Facing aft				
23	Q I	And the lig	ght which	was at	the foot of the	forward
24	ladder, wh	nere was th	nat?			
25	Α 7	That was fo	orward.			

1	mb/lf		Gome 7-Direct 326	5
2		MR. ABARB	ANEL: Then we go to page 12, line 15:	
3		"4	How long did it take you to break open	n
4	the number	er 2 hatch	?	
5		" A	I would say for the most, about a litt	tle
6	less than	n a half h	our.	
7		"Q	How many men did you need to break ope	en
8	that hat	ch?		
9		" A	We used the whole deck department.	
10		"Q	About how many men did you use in the	
11	operation	n?		
12		" A	We used about nine men ten men.	
13		" ຄ	What equipment did you use to break of	pen
14	the hatch	h?		
15		" A	Well, we used the ship's gear the	
16	booms an	nd winches		
17		"Q	After the hatch was broke up, did that	t
18	mean the	pontoons	and the tarps were off at the top deck	?
19		" A	Yes.	
20		"Q	And the hatch boards on each lower leve	el
21	were rem	oved?		
22		" A	Yes, and also a beam.	
23		"Q	The I-beam?	
24		" A	So that you have enough space.	
25		" Q	So, therefore, is it correct to state	that

25

11 A

"0

Yes.

Which deep tanks would that be?

11 A

Yes.

1	mb/lf	Gomez-Cross	701
2	"number 2 deep tar	nks, is that correct?	
3	"A	That's correct.	
4	"C	Would you consider them good men?	
5	" A	Yes.	
6	"@	In particular would you consider Da	avid
7	LaFrance a good se	aman?	
8	"A	He proved to me to be pretty good w	while
9	he was with me the	re.	
10	"Q	And Palmer?	
11	" A	Yes, sir.	
12	"@	Now you told us before that in most	t
13	cases, that in most	cases, the majority of the approxi	mately
14	150 times that you	have done deep tank work, the hatch	is
15	open, is that corr	ect?	
16	"A	Yes, not every time but most of the	time.
17	"Q	Then there are cases when the hatch	13
18	not open, is that	correct?	
19	"A	That's correct.	
20	"Q	On those occasions as a merchant se	aman
21 22	you know there are	reasons why, correct?	
	"A	Yes.	
23	" ຊ	There are occasions when there are	
24	reasons why the hat	tch is not to be opened, is that not	80?
20	"A	Yes.	

1	mb/lf Gome 7-Cross 702
2	"Q You also told us that the lighting
3	generally is left up to the men who are actually doing the
4	work, isn't that so?"
5	MR. ABARBANEL: I have an objection to the
6	form, your Honor.
7	THE COURT: Overruled.
8	MR. DOUGHERTY:
9	"A Yes.
10	"Q And the reason that it is left up to the
11	men who are actually doing the work is because they are the
12	ones who are in the best position to determine what lighting
13	they need, isn't that so?"
14	MR. ABARBANEL: Objection as to form.
15	THE COURT: This is cross examination. Objection
16	overruled.
17	MR. DOUGHERTY:
18	"A Not only that, but this one particular
19	guy I put in charge of them all, and the other guys are
20	two experienced men.
21	"Q And by that you mean LaFrance and Palmer?
22	"A Palmer, yes."
23	Page 57, line 4:
24	"Q Now it is a fact, is it not, that David
25	LaFrance never made any complaint to you about the lighting

1	mb/lf Gomez-Cross 703
2	"in the number 2 hold or hatch?
3	"A I had no complaints.
4	"C David LaFrance never made any complaint
5	to you about the lighting"
6	MR. ABARBANEL: This is repetitious, your Honor.
7	THE COURT: All right, I will allow it.
8	MR. DOUGHERTY: "about the lighting they were using
9	for the work of removing the duct plates before the accident,
10	did he?
11	"A No.
12	"Q And Palmer never made any complaint
13	to you, did he?
14	"A No.
15	"Q And Lugo never made any complaint,
16	did he?
17	"A No.
18	"Q And as a matter of fact no one made any
19	complaint about the lighting?"
20	MR. ABARBANEL: Objection, your Honor.
21	THE COURT: Overruled.
22	MR. DOUGHERTY:
23	"A No."
24	MR. ABARBANEL: What line are you reading?
25	MR. DOUGHERTY: Page 58, line 9:

of Medicine in 1943. I then served an internship and following this served in the Armed Forces in the United States Army until 1946.

I subsequently entered the field of training in the specialty known as orthopedic surgery, which is the specialty of medicine dealing with principally the arms, legs, and the trunk, the spine, and having to do with injuries and diseases to the muscles, bones, joints, and the related parts.

This residency program, which is confined to that study and training, was performed by me at the State University of Iowa in their program, part of which had to do with working in a United States Public Health Service Hospital.

This took four years, which is the prescribed time of training.

my specialty. The qualification is set forth by a national board which conducts first an inquiry as to whether or not you have completed the training.

THE COURT: Doctor, are you a fellow?

THE WITNESS: Yes.

THE COURT: Fellow of the American College?

THE WITNESS: I am a fellow of the American Academy of Orthopedic Surgery, the American College of Surgeons, and a diplomate of the American Board of Orthopedic Surgery, which

is conducted by examination and qualification.

I have limited my practice since that time to the specialty, and I am now the chief of the department of orthopedic surgery at the Jewish Hospital of Brooklyn and at the Greenpoint Hospital.

At the Jewish Hospital I conduct a training program where I, in turn, train eight physicians each year to become qualified over a four-year span to become specialized specialists in orthopedic surgery. These doctors come from all over the world.

THE COURT: All right.

BY MR. ABARBANEL:

Q Doctor, what does it involve, and what are the duties of a chief of orthopedic surgery at a hospital?

A Charge, in complete charge and have total responsibility for the care of all the patients who have orthopedic problems. I am also in charge of the training program of the residents who are in training to become specialists.

Q Are there any other hospital associations that you have other than those?

THE COURT: I think we have had enough of those.

- you are a member of if you have not covered that?
 - As I stated, I am a fellow of the American Academy

A With regard to the hand he stated that he had pain

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Q What effect does the shortening of that right leg have upon his ability to work?

A As I understand his usual occupation or any similar occupation, the shortness of the leg would cause him to limp, and to -- and this would be hazardous on a moving, uneven surface such as a ship or in a narrow ladder of a ship, and in any occupation, in fact, requiring prolonged standing, walking, bending or kneeling, or any strenuous physical situation, such as that, the shortness and other factors in the hip that I have already described would severely limit him occupationally.

What effect, if any, would it have on either climbing up or down ladders?

MR. DOUGHERTY: Objection, covered.

THE COURT: Sustained. Covered.

What effect, if any, would it have concerning his ability to sit?

A His hip becomes quite stiff on prolonged sitting in a bent, flexed position, the position he can only sit in, so I would assume that if he was in a sitting position, he would limp worse when he first got up and he would feel quite stiff and he would tend to get up and move around more frequently than normal.

Doctor, assume that one would have to work in a hatch

	70 3A	
1	mb/lf Koven-Direct	2_6
2	which had stale and uncirculated air	
3	MR. DOUGHERTY: I object, your Honor.	
4	THE COURT: Objection sustained. Covered.	
5	MR. ABARBANEL: Not with the doctor, your	
6	Honor.	
7	THE COURT: No, you covered it with the quest	tion of
8	the effect it has on his ability to work. That is all	1
9	there is going to be on this subject.	
10	MR. ABARBANEL: May we approach the Bench, yo	our Honor
11	THE COURT: Come forward around here.	
12	(At the side bar)	
13	MR. ABARBANEL: Your Honor, this has not been	n .
14	covered. What I am about to ask the doctor is can import	roper
15	ventilation and stale and uncirculated air and in a ho	ot place
16	cause one to faint.	
17	THE COURT: Objection sustained.	
18	MR. ABARBANEL: On what basis?	
19	THE COURT: Objection sustained, period.	
20	(In open court)	
21	Q Doctor, what occurs to the body when one fair	nts?
22	MR. DOUGHERTY: Same objection.	
23	THE COURT: No, I will allow that question.	
24	A There is a loss of muscle tone and support of	ausing
25		

the body to become limp and fall downward.

- Q Your specialty is orthopedics and I believe you testified on your direct examination that as to certain diagnosis that you made as an orthopedist, is that right?
- A Yes.
- And an orthopedist, you told us on your direct examination, is someone -- is a doctor who tests and examines the arms, the legs, and the spine; was that your testimony, the arms, the legs, and the spine?
- A In part.
- Q And the muscles, bones, joints and related parts; correct?
- A Yes.
- Q And that has been your lifetime work as a doctor ϵ has it not?
- A In large measure, yes.
- And it is correct, is it not, that you would leave to other specialties in the field of medicine, you would leave opinions to specialists who have spent there lifetime in those fields, would you not?
- A I am sorry, I don't know what you mean by those fields.
- If a doctor is a specialist in another field, a good solid rated specialist, in a field other than orthopedics, you would leave opinions in his field up to him, wouldn't you?

- 11			
1	mb/lf Kove	en-Cross	243
2	Isn't that just plain c	ommon sense?	
3	A Yes.		
4	Q You are not a	neurologist, are you?	
5	A Only		
6	? Are you a neur	cologist?	
7	MR. ABARBANEL:	Your Honor, let him answer	the
8	question.		
9	THE COURT: Le	t him answer the question.	
10	A Only insofar a	s what you just requoted or o	quoted
11	from what I had stated	about related parts. I am far	niliar with
12	the use and function an	nd in measure with the treatme	ent of
13	injuries to the nerves	that supply the muscles, bone	es and
14	joints of the arms, leg	gs and back.	
15	Q Are you a neur	cologist?	
16	A No.		
17	Q Are you a urol	gist?	
18	A No.		
19	Q U-r-o-1-o-g-1-	-s-t, urologist. You are not	a urologist
20	A You have asked	me that.	
21	THE COURT: Yo	ou just asked him that. Next	question.
22	Q You are not an	eye specialist, are you?	
23	A Ophthalmologis	st? No.	
24	Q In your file y	you are acquainted with the to	erms
25	"subjective" and "objective"	ctive," aren't you?	
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1	mb/lf	Sigda-Direct 360
2	"Q	About what time?
3	"A	Oh, about 10:30. It was right after the
4	morning coffee whi	ch was from ten to approximately 10:15.
5	"Q	Where were you at that time?
6	"A	In the midship house on the cruise deck
7	level.	
8	"Q	Who was it that informed you of the
9	accident?	
10	" A	I can't say. I don't know. I don't re-
11	member exactly.	
12	"Q	Do you know whether it was David LaFrance?
13	" A	I believe it was.
14	"Q	What did he tell you?
15	" A	He didn't just tell me. He was excited.
16	He said something	like, 'Lugo fell into the tank.'
17	"Q	Was anyone with you at that time?
18	" A	The chief officer.
19	"໑	What was his name?
20	" A	The chief officer's name?
21	"0	Yes.
22	"A	Minor, Bob Minor.
23	"Q	What was the weather conditions at that
24	time?	
25	" д	We had a moderate it is what we call a

1	mb/lf Sigda-Direct 361
2	"moderate sea. The ship was in light condition and we
3	were doing moderate rolling and pitching.
4	"Q Now that is basically the condition of the
5	sea. Was it a clear day?
6	"A Yes.
7	"Q Sunny?
8	"A Yes.
9	"Q After you were informed of the accident,
10	what did you do?
11	"A I rushed out on the fore deck, up to the area,
12	up to the number 2 hatch.
13	"Q Did he tell you the accident was in the
14	number 2 hatch or did you know that the men were working in
15	the number 2 hatch?
16	"A They only mentioned the deep tanks. I
17	might have followed him out that way.
18	"Q That is what I am trying to ascertain.
19	How do you know it was the number 2 hatch?
20	"A I don't I can't remember. I mean
21	they may have headed that way and I just followed."
22	Line 8, page 14:
23	"Q You followed Mr. LaFrance or whoever it
24	was that told you?
25	

I believe so.

Sigda-Direct

369

mb/lf

What did you do then?

I -- as soon as I got down there, into the 'tween deck level, I walked back, I looked down and asked LaFrance who was right there, asked him what happened.

Did he tell you what happened?

Yes.

toppled into the tank.

110 What did he tell you?

He said he was -- they were working taking

and the deep tank on the port side, and that was Palmer,

ventilator planks off the deep tanks on the starboard side

Palmer was down at the bottom of the tank. LaFrance was down

on the top of the 'tween deck level and Lugo was standing.

He pointed to the area, fairly close to him, just standing

there at that point. He said after he finished lowering the

plank he got up, turned around toface Lugo, and Lugo just

"0 After he told you this, what did you do?

11 A I turned around, observed the area, and

told h'm to get up on the deck, get the men out, start opening

the hatch in preparation to evacuate Lugo. Also to get

23

Why did you tell him to get more light?"

24

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I am sorry, I withdraw that.

some more light down into the area.

MR. LOUGHERTY: I ask that the answer to the question

Where was that light placed on the deck?

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"0

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"A So that we know what you are referring to, you have ventilators that reach down to each deck level, as well as down into the deep tanks. When you are carrying liquid cargo, these openings are blocked off; when you go back to dry cargo we take the blanks off again.

It indicates she's riding comfortably. Personally

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MR. ABARBANEL: Wait a minute. Let him answer your

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question.

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THE COURT: I will allow it. Go shead.

A From my experience I assumed that because of the closed hatch and the length of time the oil had been in that hatch, I assumed that the air was fool.

- Q You assumed but you did not know, did you?
- A I was not there.
- You were not there.

Did your information with respect to where Mr. Lugo was standing just before his accident come from Mr. Abarbanel?

MR. ABARBANEL: Your Honor, that was not put in the hypothetical question.

THE COURT: That was not in the hypothetical question.

Objection sustained. There was no discussion as far as I

know of his testimony of where it came from.

- Did your information about the temperature inside that hatch come from the mouth of Mr. Abarbanel?
 - A Yes. I don't know what the temperature was.
 - Q You don't know what the temperature was?
 - A Notin actual fahrenheit figures, no, sir.
- Q In his discussions with you, did Mr. Abarbanel tell you that Mr. Lugo had testified that the light had been placed at the foot of the back ladder?
 - No, I don't recall any such information at all.
 - Q Did Abarbanel at any time read to you the following,

1	mb/lf Horka-Cross
2	Q And all ships move a little bit, don't they?
3	A Oh, yes.
4	Q And sea legs, I would suggest to you, that means
5	that a seaman has acquired the feel of a ship underway,
6	and has adapted to 1t, correct?
7	A Yes, but he can lose that facility under some
8	conditions.
9	Q He can lose it?
10	A Lose that facility under some circumstances.
11	Q Could he lose that facility as a seaman?
12	A Oh, yes, indeed, a seaman can go clean off his feet
13	Q He can be?
14	A Oh, yes, in a moving ship, or from other causes,
15	oh, yes.
16	G By the action of the seas in the ocean?
17	A Oh, yes.
18	Q You certainly wouldn't blame the action of the
19	ocean on any ship's officer, would you?
20	MR. ABARBANEL: Objection, your Honor.
21	THE COURT: Objection sustained.
22	O You are acquainted with the work that was being
23	done adjacent to these after deep tanks in the number 2 hatch
24	on the Steel Maker, aren't you?
25	

MR. ABARBANEL: As of the time of the accident?

THE COURT: How long are booms, roughly?

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	115SA
1	mb/lf Horka-Cross 449
2	THE COURT: We don't know whether it is or not
3	yet.
4	MR. DOUGHERTY: I dispute that statement vigorously.
5	THE COURT: All right, I have overruled the objection.
6	THE WITNESS: Answer t, your Honor?
7	THE COURT: Yes.
8	A There is not a great increase in wind. The wind
9	direction is from the same. Swell from east increasing.
10	There is a mention of an increase in swell.
11	Q Then I take it from your answer that you know no
12	contraindication do you understand what that means
13	nothing to contraindicate having the hatches open on June
14	2nd?
15	MR. ABARBANEL: Your Honor, I object.
16	THE COURT: Overruled.
17	A Conditions were practically the same as on June
18	1st, with a slight increase in wind and the sea was making
19	up. That is, the swell was making up on June 2nd. Swell
20	from swell increasing from east, increasing. You see, heav
21	deep east northeast swells.
22	Q Captain, keep reading and see if you might change
23	your mind.
24	A There is a change in weather on June 2nd, yes, sir.

There is a change in the weather? Was it significant?

	116SA
1	mb/lf Horka-Cross 450
2	MR. ABARBANEL: I object.
3	THE COURT: What was the change in weather?
4	Q What was the change in weather?
5	A The ship was rolling, pitching. There is no mention
6	of ship taking water.
7	MR. ABARBANEL: I would like to know what time,
8	your Honor.
9	THE COURT: You can find that out easily enough by
10	looking at that log.
11	A Mr. Dougherty, all my testimony applies to June
12	1st when different weather conditions
13	MR. DOUGHERTY: I object and move to strike.
14	THE COURT: Yes, please, don't volunteer, Captain.
15	Answer the questions.
16	THE WITNESS: Very well, your Honor.
17	Q Captain, I show you the official log for June 2rd.
18	MR. DOUGHERTY: Your Honor, may I have just a moment,
19	please?
50	(Pause)
21	Q Captain, I show you the deck log for June 2nd again.
22	MR. ABARBANEL: Is that the same page?
23	Q Same page as previously read and marked with a tab,
24	and I would ask you to read this line right here at 2000 hours
25	which would be what, 8:00 p.m.? Would you read that line out
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		110SA
	1	mb/lf Horka-Cross 452
	2	(Pause)
	3	MR. DOUGHERTY: I offer that in evidence.
	4	MR. ABARBANEL: I object, your Honor, on the ground,
	5	one, it is not relevant; two, it doesn't set forth the
	6	time.
	7	THE COURT: Objection overruled.
xxx	8	(Defendant's Exhibit D received in evidence.)
	9	THE WITNESS: I don't recall what you wanted me to
	10	read in the official log.
	11	Q Yes, under June 2nd, Captain.
	12	A Had a boat drill, fire boat drill.
	13	Q Would you read it out loud to the jury?
	14	A Read 1t out loud?
	15	Q Yes, sir, under dates of June 2, 1972.
	16	A "Fire boat drill deferred due to rough weather,
	17	Typhoon Lola." They don't say that we're in Typhoon Lola,
	18	do they?
	19	Q Thank you.
	20	THE COURT: No, no, look, you were asked to read it,
	21	Captain. Not to comment on it.
	22	THE WITNESS: Yes, sir. I am sorry, your Honor.
	23	THE COURT: Just read it.
	24	A "Fire boat drill deferred due to rough weather,
	25	Typhoon Lola."

LE COURT: Overruled.

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453

They apparently found it necessary to work in a hatch on a previous day so they were not concerned about weather.

1	mb/lf Horka-Cross 454
2	MR. DOUGHERTY: I move to strike the answer.
3	THE COURT: Strike the answer as not responsive.
4	Answer the question, Captain.
5	MR. DOUGHERTY: Would you repeat the question, sir?
6	(Question read)
7	A Yes. Under the conditions recorded in the log on
8	June 1st.
9	Even though they are in the vicinity of a typhoon?
10	MR. ABARBANEL: Objection, there is no testimony
11	that they were in the vicinity of a typhoon on Jun 1st.
12	MR. DOUGHERTY: I will withdraw the question.
13	Q What was the vessel's bearing on the date of June
14	1st at approximately 10:00 a.m.?
15	A Bearing?
16	Q Yes.
17	A I don't understand what you mean.
18	What was her course? What was her course heading?
19	A She was heading in an easterly east northeasterly
20	direction.
21	Q Do you know her bearing, though?
22	A The word bearing is inapplicable.
23	© Course heading?
24	A The course heading, I don't know the exact course
25	heading, no, sir. She was bearing to the east for Hawaii.

1	mb/lf	Horka-Cross 455
2	Q	Where would the sun be at about that hour of the
3	day?	
4	A	Directly ahead.
5	Q	Directly ahead. Do you know the sea temperature?
6	А	I don't.
7	ચ	Do you know the air temperature?
8	А	I could make a statement. I haven't seen it in the
9	log. The	e air temperature was 90. I have heard that given
10	in testin	mony.
11	Q	Mr. Abarbanel told you?
12	A	Yes.
13	Q	You don't know the temperature of the water, do you?
14	A	No, but I have a fair idea.
15	6	If you are at the tank top level, you are just
16	about at	the waterline, are you not?
17	A	Tanks are 18 feet deep. The ship drew 25 feet. You
18	are below	w the water level.
19	Q	Water cooler than the air, Captain?
20	А	Some degrees, to some extent, yes.
21	Q	Any idea of the water temperature around Guam?
22	Α '	It can be
23		MR. ABARBANEL: Your Honor, I will object.
24	A	70, 80.
25		MR. ABARBANEL: Unless he specifies the time.

1	mb/lf	Horka-Cross 456
2	Α	It can be 70, 80 depending on the prevailing current.
3		THE COURT: All right, I will overrule your objection.
4	Q	The hatch had been opened the day previously, you
5	did rece	ive information about that from some source, correct?
6	Α	They worked cargo in Guam, yes.
7	Q	Obviously, you have sailed in those waters, have
8	you not?	
9	А	Yes, I have.
10	Q	Is Guam tropical or subtropical?
11	А	It's north of the equator but it's mighty juicy.
12	It's ver	y warm.
13	Q	They have trade winds in that area?
14	۸	Trade winds from the east, yes.
15	Q	The night air cooler than the daytime air, Captain?
16	А	There is a change, yes. It's more moderate, but not
17	there is	n't a great change in temperature. It's certainly
18	n ot 90 b	out it's stifling sometimes.
19	Q	Do you know what the nighttime temperature was on
20	the nigh	at of May 31st?
21	A	I don't.
22	ದಿ	Ever been in the galley of a ship?
23	A	A galley?
24	· Q	Yes.
25	Α	Kitchen?

1	mb/lf	Horka-Cross	457
2	0	Kitchen.	
3	А	Yes, yes, indeed.	
4	Q	Hou in ware?	
5	А	Yes. Usually hotter than other compartments.	
6	Q	Seamen working in there?	
7		MR. ABARBANEL: Your Honor, I will object to	this.
8		THE COURT: Overruled.	
9	Q	Seamen work there?	
10	А	The cooks work in there.	
11	Q	Are cooks seamen?	4
12	А	Yes, they are seamen legally, yes.	
13	0	Have you ever been in the engine room?	
14	А	Yes.	
15	Q	Is it hot down there?	
16	А	No, it isn't.	
17	Q	It's not hot in an engine room?	
18	А	No.	
19	0	Are they air conditioned?	
20	А	No, but there's ventilation provided.	
21	Q	Do you have any information from any source	whatever
22	as to wh	ether any of these men made any complaints on	the
23	morning	of June 1st	
24		MR. ABARBANEL: I object.	
25	ବ	before the coffee break	

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126SA mb/lf Horka-Cross His function is mainly to see that union rules are complied with; but as for the navigation and handling of the ship, he can intercede and discuss it with the officer concerned, but he doesn't have any authority to make any changes. That's the function of a delegate. Can he receive complaints? Can he receive complaints from the men? MR. ABARBANEL: Objection, this has been gone through, your Honor, repetitious. Yes, yes. THE COURT: Overruled.

Captain, if none of these three men had any complaints that morning about the lighting or the ventilation, either before the coffee break or after the coffee break, and if they are the men working in that hatch on June 1, 1972, would you say that they are in a better position to form a judgment about the adequacies of working conditions than you are sitting here in the witness stand?

I was not there. Yes, in direct answer to your question, yes, they were there.

- They are in a better position than you, correct?
- My information is as I received it.
- Can you estimate the size of this hatch, the length and width of the work area?

1	mb/lf	Horka-Cross	465
2	Q	Now you remember?	
3	Δ	Yes, retrograde.	
4	O	Tanks?	
5	A	Was it in that hatch? I am not sure.	
6	Q.	Jeeps and trucks and so forth?	
7	A	Was it in those tanks? I am not sure.	
8	0	Yes, it was.	
9		Now, Captain, lube oil is an ordinary commod	lity, is
10	it not,	that is frequently carried aboard these ships	3?
11	A	In tanks, yes, sir.	
12	Q	In tanks, yes.	
13		Have you carried it?	
14	A	Yes, indeed.	
15	S	You are acquainted with it, you are used to	it,
16	you know	what it is when you see it?	
17	A	Yes.	
18	ବ	After a cargo of lube oil is discharged, is	it
19	the cust	om and practice for the tank to be cleaned?	
20	Α	Yes. In preparation for another cargo.	
21	Q	And you know as a fact in this case that the	tank
22	was clea	ned, do you not?	
23	A	I don't.	
24	6	Mr. Abarbanel didn't tell you that, correc	t?
25	A	I don't have any information whether the ta	nk had

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at all?

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Q You still would clean it?

A It would be a good practice to have it cleaned, yes.

A Oh, they are informed in plenty of time.

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will be, does she?

1	mb/lf Horke-Cross 470
2	Q Planks are put down there by gangs of men, are
	they not?
4	A Yes.
5	Q Captain, is it or is it not good custom and practice
6	to work in your own shadow?
7	MR. ABARBANEL: I will object to the question,
8	your Honor.
9	A I hadn't given that any thought.
10	THE COURT: No, I will sustain an objection to that
11	question.
12	MR. DOUGHERTY: If your Honor please, Mr. Lugo tes-
13	tified he was working in his own shadow.
14	THE COURT: I understand.
15	MR. ABARBANEL: Your Honor
16	THE COURT: It's entirely too general a question.
17	Q If I tell jou, sir, that Mr. Lugo has testified
18	that he was working in his own shadow, would that be good
19	custom and practice on the part of an ordinary seaman?
20	MR. ABARBANEL: Objection, your Honor.
21	THE COURT: I will allow it.
22	THE WITNESS: Sustained, sir? Shall I answer it?
23	THE COURT: Yes.
24	A It depends on Mr. Lugo's eyesight. Perhaps it was
25	impaired. Perhaps it did I'd avoid working in reduced

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	133SA
1	mb/lf Minor-Direct 494
2	A Yes, I told the bos'n, who was in charge of the
3	people that are working on deck on the ship, and the bos'n
4	appoints the men that he has, tells so many men as he needs
5	to go down and whatever the job may be. He is in charge of
6	the job and laying it out.
7	Q Do you recall approximately when you asked the
8	bos'n to have that work done?
9	A We discussed it the day before about having it
10	done.
11	Q Did the bos'n, in fact, assign men to do that?
12	A Yes, he did.
13	Q Do you recall how many he assigned to do it?
14	A Was and the four to eight watch because they

- it?
- A He assigned the four to eight watch because they worked together as a unit, that's three men, and he said that would be sufficient men, so he appointed the four to eight watch.
 - Do you recall the men on the four to eight watch?
- Yes, there was LaFrance, David LaFrance, Charles Palmer, and Vicente Lugo.
- Were you acquainted yourself with the working capabilities of David LaFrance, Mr. Palmer, and Mr. Lugo?
 - A Yes, I was.
- What was the work capability, taking them one at a time, of Mr. Lugo, the plaintiff?

that was -- that lowered down into the deep tank; and the

A The work, as laid out, was to -- they had a ladder

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in the number 2 hatch?

- At the time I didn't observe anything relevant.

 It was just no reason to. I wasn't stuffy, it wasn't dirty or anything like that.
 - Was it excessively hot?

 MR. ABARBANEL: I object to the form of the question.

 THE COURT: No, I will allow it.

A No, 1t wasn't.

- Q Can you describe the temperature? I don't mean in terms of numbers but can you describe the temperature?
- A The outside temperature I imagine would be in the -June -- would be in the high seventies, low eighties, possibly.

 MR. ABARBANEL: I object to him imagining, your

Honor.

- And down below in the decks would be several degrees cooler I suppose because it wouldn't have been warmed up yet.
- Q Did you have any trouble breathing in the number 2 hatch on that morning shortly after the accident?
 - A No, I did not.
 - Q What occurred next?
- A Let's see, we -- Captain Sigda was in the hatch also, and he called somebody to get some more lights and to have -- go up on the bridge and have them stop the vessel.
 - Q What was the reason that more lights were needed

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number 2 hatch when you entered the number 2 hatch?

A When I went down there, the lights were in the deep tank, the after deep tank on the port side.

Q Both of them were there at that time?

A Yes.

Q That was approximately how long after the accident to Mr. Lugo?

A Oh, I'd say at the most five minutes, four, five minutes, not more than five minutes.

Q One of the lights had been moved, is that correct, to assist?

MR. ABARBANEL: I object to the form.

THE COURT: No, no, please.

MR. DOUGHERTY: I will reframe it.

Q Was the lighting arrangement when you first entered the number 2 hatch rather as the lighting had been for the work thing performed, was the lighting arrangement adequate?

A Yes, it was.

Q Captain, have you heard the term "batten down the hatches"?

A Yes, I have.

Q What does that mean?

A It means that all the hatch boards are in place, canvas tarpaulins are stretched, wedges in the sides and the

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To prevent a vessel from going to sea before it is

THE COURT: It was read in the record as I recall it.

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It speaks for itself.

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I see no reason why you shouldn't so stipulate.

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about Typhoon Lola in the official log.

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THE COURT: All right.

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MR. DOUGHERTY: Then I will take the time to actually show him, your Honor, if I may.

MR. ABARBANEL: Yes, there was some comment made

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I show you now the official log, Defendant's Exhibit D, under the date of June 2, 1972. Does that refresh your recollection, Captain, as to whether the vessel had occasion to cancel the fire and boat drill because of

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Typhoon Lola?

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MR. ABARBANEL: Objection to form.

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THE COURT: Overruled.

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A The log entry regarding that dated June 2, '72, "At sea, fire and bot drill deferred due to rough weather, Typhoon Lola."

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Q What is a fire and boat drill?

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A Fire and boat drill is a requirement by the U.S.

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Coast Guard on all American vessels that fire and boat drills be held weekly. All passengers and crew are assembled at

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"Abandon Ship" stations for fire drills. Of course, the

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crew are the only ones that attend the fire drills and the

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fire stations are manned and full pressure put on the fire

hoses and all the equipment is inspected to see that it is in

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working condition and in good condition; and the boat drill,
weather permitting, the boats are lowered down to the
embarkation deck, because they are stowed up quite a ways

6 weather.

Q If the vessel is encountering rough weather, are you able to carry out a fire and boat drill?

up in the air to keep them away from the deck out of the

A No, ordinarily -- well, no, you wouldn't because it would damage the lifeboats; when the vessel is rolling and these lifeboats are suspended by these long wire falls which would be about twelve, fifteen feet, just hanging freely and every time the ship rolled it would just bang them back and forth into the side of the vessel, and very, very likely damage the lifeboats --

Q Captain, do you see an entry in the deck log relative to Typhoon Lola?

In the deck log may I invite your attention to the lower right-hand side (indicating).

- A Yes, here it is.
- Q Will you read that, please?
- A The 1422 entry or 1400?
- Q 1400.

A Dated Friday, June 2, 1972, time 1400, entry: "Rough sea, occasionally very heavy, confused swells mainly from the

easily, ordinarily, put it on either one bow or the other so

the vessel doesn't rise up bodily like that and slam into it. If it's on one bow or the other you more or less roll and tilt at the same time so it doesn't have a severe bounce when it goes back down, which is likely to cause damage to the bottom plating and stuff like that.

Q In our language, the jury and so forth, do I take that to be that at two o'clock in the afternoon the ship's course heading was changed because of Typhoon Lola?

MR. ABARBANEL: Objection to form.

THE COURT: No, you have to do that in this situation.

- A Would you repeat that question, please?
- Q Yes, will you repeat it, Mr. Reporter.

 (Question read)
- A Yes, that's correct.
- Q Is it the custom and practice for a merchant vessel when at sea to receive reports from shore concerning forthcoming storms or typhoons?

A Yes, the American Weather Bureau, and the Navy is very, very good at sending out reports. They usually send out advisories, what they call advisories every four hours. They have these reports from various vessels in the vicinity, that gives the conditions, barometer reading, wind, and condition of the sea and swell, plus these planes that are flying around will locate the center of it and every

Minor-Direct

four hours they will send out the position of the center and give an estimate of what they expect the storm center will be and the speed at which it is moving, and intensity of the wind and the area which it is expected to cover.

Inviting your attention back to the work that these three men were doing in the number 2 hatch on the morning of Mr. Lugo's accident, is there a custom -- withdrawn.

Was that order routine deck department work or was it not?

A Yes, it was routine work.

Q Is there a custom and practice aboard ships of this class for the carrying out of that particular job?

A I don't quite -- is it routine?

Q What is the custom and practice aboard ships, aboard C-3 vessels for carrying out that type of job?

MR. ABARBANEL: I will object to the form of the question, your Honor.

THE COURT: Overruled.

mean the bos'n is the man that is in charge of the deck department and no matter what the job is, he picks the number of men he thinks is adequate to do the job, and he sees that the tools are issued to them; ordinarily he stands around to see that the job is started and then he goes on to

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main deck should have been open?

A No, I can't think of any reason why it should be open.

Q Do you know of any reason why on the morning of June 1, 1972, there should have been any more or different Illumination in the number 2 hatch?

MR. ABARBANEL: I will object, your Honor. There has been no testimony that he knows what the illumination was at the time of the accident.

THE COURT: All right. Objection sustained.

How many cargo lights did you see in the number 2 hatch at the time that you entered the number 2 hatch?

MR. ABARBANEL: Repetitious, your Honor, objection.

THE COURT: No, no, I will allow that in view of your objection just now.

A To the best of my recollection it was three, I am quite sure, three cargo lights.

Q Do you know of any reason why there should have been any more or different illumination in the number 2 hatch on the morning of June 1, 1972?

A No, I can't see any reason for there being.

MR. ABARBANEL: Your Honor, I would like an objection for the record even though it's belated that there has been no testimony.

THE COURT: It's belated --

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MR. ABARBANEL: That he knows what was in that hatch at the time of the accident or how many lights were on.

Do you know of any reason why on the morning of June 1, 1972, there should have been any greater or different ventilation in the number 2 hatch?

A No, I don't.

Q Now, sir, on the morning of June 1, 1972, were there or were there not sources of air into the number 2 tween deck where these men were working?

MR. ABARBANEL: Objection as to form, your Honor.

THE COURT: What?

MR. ABARBANEL: Objection as to form. It's leading and suggestive.

THE COURT: How about saying why?

MR. ABARBANEL: Because it's leading and suggestive.

THE COURT: I don't see that that's leading and suggestive. I don't see how else he could ask the question. Overruled.

MR. ABARBANEL: 1 .111 phrase it if you don't know, your Honor.

THE COURT: You needn't phrase it.

As far as ventilation inside the hatch, we have the escape hatch which I mentioned before, which is open all the

THE WITNESS: No.

A To my knowled ?, no, I do not know.

1	mb/lf	Minor-Cross	530				
2		Did you so testify?					
3	А	Yes.					
4	Q	You testified the planking was put in in Vie	etnam,				
5	is that	correct?					
6	А	Yes.					
7	6	That was done by a shore gang?					
8	A	Correct.					
9	Q	While that planking was being put in, was the	ne				
10	hatch open?						
11	A	Yes.					
12	C	You testified that cargo was loaded in the	number 2				
13	hatch.	While that cargo was being loaded, and that	is the				
14	retrograde military cargo, which I believe you said was						
15	loaded	in Vietnam some place, was the hatch open at	that				
16	cime?						
17	A	Yes, 1t was.					
18	0	And then you said at the next port, which I	believe				
19	was Gua	m, the cargo was unloaded, is that correct?					
20	A	Yes.					
21	6	And while the cargo was being unloaded, was	the				
22	hatch o	pen?					
23	A	Yes, 1t was.					
24		When you went into the hatch, number 2 hatch	ch after				
25	the acc	ident, would you say it was hot?					

1	mb/lf	Minor-Cross 531
2	А	Not excessively. I don't remember it being
3	hot. It	was
4	Q	Forgetting the adverbs, just was it hot or not?
5	Α	No.
6	0	It wasn't hot. Was it cool?
7	Α	It wasn't cool. It was normal for that temperature,
8	I mean fo	or that area of the world.
9	ବ	Was it sticky?
10	А	No.
11	Q	Was there any moisture there?
12	^	I don't believe so. I mean I wasn't paying
13	particula	ar attention to the weather when 1 was down there.
14	Q	What were you particularly concerned with at that
15	time?	
16	А	The man that was involved in the accident.
14	Q	And as a good officer you were concerned with his
18	welfare,	1s that correct?
19	А	That's right, yes.
20	Q	You weren't really concerned with the atmospheric
21	condition	ns in the hatch, were you?
22	A	Not right at that moment.
23	Q	Did you hear the captain when you got into the
24	number 2	hatch state
25		MR. DOUGHERTY: I object to what

	1528A					
1	mb/lf Minor-Cross 541					
2	in that hatch at 9:00 a.m. the mornin of June 1, 1972, did					
3	you?					
4	A I wasn't down there, no.					
5	Q When the ventilation system is turned on, that					
6	changes the air in the hatch, is that correct?					
7	A Yes.					
8	Q If you broke the hatch open, while the ship was					
9	proceeding at 16 knots, and there was a force 5 wind, would					
10	that create a breeze out on the open deck?					
11	A Oh, yes.					
12	And if the hatch was open, would that breeze					
13	enter into the hatch?					
14	A Yes.					
15	Q And if the sun was out and the hatch was open,					
16	would the sunlight enter into the hatch?					
17	A Yes.					
18	Q In addition to the hatch being closed at the					
19	main deck level, it was also closed at the square of the					
20	hatch, is that correct?					
21	A Yes.					
22	Q At any time while aboard the ship, did you tell the					
23	crew members to use table salt if they needed salt?					
24	A I didn't tell them to use table salt. Someone					
25	asked me one time if I would replenish the salt tablet supply					

Under these conditions?

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No.

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MR. DOUGHERTY: I object.

Q How many times have you met with Mr. Dougherty since the accident to discuss this case?

A Meeting him here today I should say would be about the third or fourth, possibly the fourth.

MR. ABARBANEL: I have no further questions.

THE COURT: All right, anything further now?

REDIRECT EXAMINATION

BY MR. DOUGHERTY:

Captain Minor, when you entered the hatch after the accident, you said both lights at that time were in the deep tank, is that right?

A Yes.

MR. ABARBANEL: Your Honor, objection as to form of the question.

THE COURT: Objection overruled.

Q And with both lights in the inside in the deep tank, was there adequate illumination remaining for the deck area where the men had been working or was there not?

MR. ABARBANEL: Objection, your Honor.

THE COURT: Overruled.

A No, you mean for the men that were coming down to assist in getting them out of the hatch?

Q Yes.

that are not entered in the log book?

Beg your pardc

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Q Withdrawn. Is the log book the only place where there are -- withdrawn.

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The vessel receives and has reports, I think you called them advisories, is that correct, of impending storms

A The advisories are sent not on the pending storm

but a storm that is already in progress they send these

aircraft and, of course, now we have sat light trackers

and every four hours they give the position of the center

of the storm, barometric reading, the wind direction, the

force of forward movement and so on, so you can more or less

if you should become cut off and you want to track your own

storm track.

Q Next, sir, do you ecall on what hour or what approximate hour on the day before the accident you inspected the number 2 hatch?

A It was in the afternoon, late in the afternoon, rather late in the afternoon. I don't know exactly what t'me it was.

Would that be your routine?

A Yes, under the circumstances, it would be.

Next, sir, can you tell us what was the course heading of the Steel Maker shortly after 10:00 a.m. on June

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Q You mentioned rust. You told us before that

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deep tanks in the number 2 hold?

A Right.

Q All right. What is the purpose, Captain, of those deep tanks?

A The deep tanks is designed on these particular ships so that it can carry liquid cargo or dry cargo. It has large tank covers that can be removed and large objects of dry cargo, packages, cases, bales, maybe stowed in that compartment.

Q Are you acquainted with the main deck level or weather deck level of a C-3 and, if so, will you briefly describe what that consists of and if it includes pontoons, how they are put in place and removed?

A Yes, sir. The weather deck area is the section at each of the end of the weather deck area there is a set of cargo gear, booms, king posts or masts, booms and winches so that the material, the equipment that is necessary to work the cargo. The square of the hatch or the part of the hatch that you open to load the cargo or to discharge the cargo is about 35, 36 feet long and it's about 22 feet wide and when the ship is underway it's covered by steel pontoons about six foot in the fore and after dimension and the full width of the hatch about 22 feet wide. On top of these pontoons are three tarpaulins, heavy canvas tarpaulins that are secured,

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battened down, over the top of the pontoons so as to make the hatchway a watertight closure, so they will resist entry of water.

Q And finally as background, Captain, would you explain the ventilation system aboard the C-3 as regarded the number 2 hatch?

A Yes, sir, the wentilating system consists of four units, one located generally in each corner. The forward starboard corner, forward port, each corner of the hatch. These are what we call forced ventilation, meaning they are equipped with fans either to exhaust air from the compartment or to feed air into the compartment; sometimes you use two to exhaust and two to supply or you can turn off all the fans and you have then natural ventilation coming into the compartment.

Q With the ventilators not on and the top or main deck covered up, does air have a way of coming into the number 2 hatch?

A Yes, sir.

MR. ABARBANEL: I object to the form of the question.
THE COURT: Overruled.

Yes, it does.

How does that come about?

A Because the exhaust vent'lators are up on top of the

wing post about 40 feet above the deck and the very motion of the ship through the air will create what is known as a venturi effect. The air rushing through these confined openings at the mushroom ventilator is accelerated and it picks up air through the mast, through the inside of the pipe, which is in effect extracting air from that compartment. The other supply cowl ventilators, they are open even though the fans are stopped and there is a good effect cowl so when the pressure, the air pressure in the compartment is reduced, however slightly, by the king post exhausting the air from the compartment, the air, the outside air enters through the other set or the supply set of ventilators and there is never any atmospheric pressure difference between the air in the hold and the air outside.

Therefore, I take it, Captain, that even when the ventilating systems are not switched on, there is never a time when there is not a supply of fresh air coming into the hatch?

MR. ABARBANEL: Objection, your Honor.

THE COURT: I will sustain an objection to that question. That is entirely -- it's a statement. It's not a question. It's entirely leading.

Q Is there or is there not at any time aboard a C-3, as regarded the number 2 hatch, is there or is there not a time when fresh air is unavailable, unable to come into the

in steel drums, 55 gallon drums. If it's shipped in larger

parcels it's carried in bulk in the tank of the ship. The tank before lube oil can be loaded is very completely washed down, it's washed down with a kerosene wash, and it's made -- the tank has to be pure, clean, in order to carry lube oil.

Q What is the custom and procedure for the cleaning of tanks after the discharge of bulk lube oil?

on the vertical surfaces on the overhead surfaces of the tank. In a matter of 48 hours it will drip down. It will come down the vertical sides so after a lube oil cargo has been discharged the stump or the bottom of the tank needs to be cleaned out so that the residue, the pools of lube oil that dripped off the side would be taken out.

Q Captain, I want you to assume, please, that a vessel, the Steel Maker, a C-3 vessel, is at sea, heading across the Pacific on June 1, 1972, in the area of Guam. Incidentally, are you acquainted with that area?

- A Yes, sir, I have been out that way.
- Q Have you sailed in that area?
- A Yes, sir, I have.
- Q All right, in the area of Guam, and that the removal of plates in the number 2 after deep tanks is necessary.
 - A Yes, sir.

Wheeler-Direct

not?

A Yes, sir, it is.

and the bosin, three deck men are assigned to to remove those plates. I want you to assume further that the men go down into that area, and bring with them three cargo lights, two of which the men themseleves decided to use and to illuminate. I want you to further assume that one of these cargo lights is placed a short distance into one of the after deep tanks and the other cargo light is placed at the forward end of the hatch square of the hatch on the deck, shining aft, placed on its side.

Is that job a typical deck department job or is it

Do you have any opinion as to whether that, the way in which that job was set up to be carried out or arranged to be carried out accord with the good custom and practice in the maritime industry aboard ships of this class?

A Yes, sir.

MR. ABARBANEL: Your Honor, objection to the form of the question in that it contained a statement that the three men agreed to rig the lights in this manner. There is no such testimony in evidence.

THE COURT: Let's change it to the lights were rigged.

Assume the lights were rigged.

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THE COURT: I assume the answer would be the same.

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What is your opinion?

It makes no difference.

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A Yes, sir, it's my opinion that two portable cluster

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lights could be used and so arranged as to accommodate the

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activity of three men in that compartment. You have three men,

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you have two lights. One light is used to generally illuminate

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the area with a diffused light. These are not spotlights.

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These are floodlights, more so.

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Then one light, after the men arrive at the job

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site, one light would be used directed ento the job. So

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two lights should be sufficient, plenty to accommodate -- to

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furnish sufficient illumination for three men.

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O Do you have any opinion as to whether the carrying out of that work without -- under those circumstances --17

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without the blowers being actually turned an accorded with

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good custom and practice aboard vessels of ... it class?

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A Yes, sir, it would be good custom and practice to

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use -- not to use the blowers, because if you did turn on

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the blowers, it's a very high noise level would exist in that

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area. The men couldn't speak to each other, it's that high,

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and there might be a dust -- the fans -- the air could be entering that department at such a velocity that it would

vessel? Would it be at the ship's side or at the back?

A It would be about ten, fifteen degrees on the star-board bow just slightly on the starboard bow. It would be almost dead ahead. Soon after the sun rose, it would be dead ahead.

- Q Now, were there or are there not different levels of the number 2 hatch aboard a C-3?
- A Yes, sir, there are three.
- Q Would you very briefly describe those just in a minute or less?
- Q There are three dry cargo compartments, the weather deck covers the topmost dry cargo compartment. That space is called the upper 'tween deck space. It's the space between the weather deck and the first deck below. That is the upper 'tween deck space, the space in which cargo can be stowed. Below that you have the lower 'tween deck space. Either one is about nine or ten feet high. Below that you have the lower hold which is about fourteen feet and in this number 2 hatch on a C-3 and below that you have this tank that we're talking about here.
- Q At the level as illustrated on one of the photos where these men were working inside the ship, what would be the relative level of that spot in relationship to the level of the ocean and outside?

THE WITNESS: Well, at a normal draft, part loaded draft,

A That after carring a cargo of liquid, of oil in this case, then these plank plates that had been shutting off the ventilation to keep the impurities out of the lube oil, so then you'd remove the plank plates so that compartment

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is going to be carrying dry cargo and dry cargo should be ventilated and the impurities from the outside air wouldn't affect the dry cargo where that would have affected the lube oil so it's necessary to remove the plates.

And does it accord with good custom and practice to assign men to do the work in that area under those circumstances?

A Yes, sir, this is -- can most conveniently be done underway when the ship is underway and there is not outside labor working in that compartment.

Q Incidentally, is this work or is it not ordinary routine deck department work aboard ship?

A It would be ordinary routine work.

Q Captain, you have heard the term "sea legs"?

A Yes, sir, I have.

Q Tell us in just a few words what does that term connote or mean?

It means people who are aboard a ship and the ship is always moving, the surface of the sea always has some turbulence to it, some undulating swells or even rough seas, and after you have been aboard ship for a period of time you almost instinctively accommodate yourself to the motion of the ship, and you counteract by moving -- by shifting your weight to -- in synchronization with the movement of the

ship.

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24 25 years, is that right?

A Yes, sir, that's right.

Q Would you or would you not expect that a man who

Q As a captain you have observed and you have had

to pass judgment concerning many men beneath you for many

has been a seaman for more than eight years and who has been a deck department man for more than three years, and who has had a reputation of being a good seaman, would have or should have had sea legs by the time he had completed that degree of experience?

MR. ABARBANEL: Objection, your Honor.

THE COURT: Overruled.

A Yes, sir, I would expect that after about four or five months a man accommodates himself, becomes acclimated to the conditions aboard ship.

Q Have you heard the term, sir, "batten down the hatches"?

A Yes, sir, I have.

Q Just in a very few words, very briefly, what does it mean and what is it, if there is any necessity behind that practice, what is the necessity?

A Yes, sir, the battening down of the hatches, the cargo hatches, means that the cargo compartments, the watertight

integrity of the cargo compartments has been accomplished because the big opening in the hatch through which the cargo is loaded or discharged, that is now made watertight and it does so by placing the pontoons that I referred to before and the three watertight tarpaulins, which are spread across the top of the hatch, bent over, put into fastening devices, cleats and wings are driven in to make the hatch absolutely watertight.

- Q Is there any custom and practice sailing across the Pacific in the area of Guam to Pearl Harbor, in the month of June or May, concerning battening down?
- Yes, sir, whenever a ship goes to sea.
- Q May I add this, just to speed it along, are there or are there not any regulations concerning battening down?
- A Yes, the ship must be secured for sea before she leaves the perimeter or the limitations of the port area.

THE COURT: And here is battening down necessary to secure the ship for sea?

THE WITNESS: Yes, sir, the ship, to be secured for sea, all hatches must be battened down.

- Q Are there any regulations?
- A I believe there are Coast Guard regulations, yes, the ship has to be secured for sea before it leaves the limitations of the port.

THE COURT: Yes.

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THE WITNESS: The entry reads, "Rough sea and occasional very heavy confused swells mainly from east southeast.

"1422, change course to 140. 140 degrees per gyro compass, P.G.C. 140 degrees true, in order to pass out of Typhoon Lola."

Q So you know the -- on June 2, 1972, in the official log do you see a referral to Typhoen Lola?

A Yes, sir, fire and boat drill which is required to be carried out once a week was deferred due to the approach of Typhoon Lola.

Now, Captain, apart from those entries and inviting your attention to the date of June 1, 1972, and the deck log, do you see or do you not see any indications in the deck log under that date of any impending storm?

A Yes, sir, there is the barometer readings on the day before on June 1st are practically steady and almost the same as they were on June the 2nd, so a steady glass, a steady barometer, with wind out of the northeast in this particular geographical area means that you can expect a tropical disturbance generated in that area. In that area they call them typhoons. Over here we call them hurricanes.

Q Would those signs or signals be a factor or would they not be a factor to be taken into consideration, Captain,

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in whether or not the number 2 hatch should be open at the 3 main deck level on June 1st.

MR. ABARBANEL: Objection as to form.

THE COURT: Overruled.

A Yes. The fact that the hurricane or the disturbance here, the typhoon, had been designated Lola, L, meaning it's the twelfth letter of the alphabet. It means that this is the twelfth typhoon for this season in this area. The weather bureau designates the name, designates the disturbance as a typhoon. It gives it a name. The barometer here shows that the master of the ship here was aware of this and he was adjusting course to allow this -- adjusting course and speed to allow the typhoon to pass ahead of him in a less disturbed area and he would let the typhoon cross ahead.

MR. ABARBANEL: Objection as to his testimony as to what the captain was aware of. That is speculation and conclusion on his part.

> THE COURT: No, I am going to let it stand. Captain, I an nearly done, couple of more points.

You can ask a couple of more questions and then we'll take a recess until tomorrow morning at the conclusion of this witness and then we'll hear from Mr. Abarbanel.

I would ask you to assume that the tank after, the

1	178SA
1	mb/lf Wheeler-Cross 679
2	ment, it could create something resembling a dust there
3	would be particles in the air, turbulence.
4	Assuming the hatch had to be closed while you were
5	creating this dust storm?
6	Right, open or closed you'd have the dust.
7	Q Assuming it's closed and there are no members of
8	the crew in there, you can turn that ventilation system on,
9	can't you?
10	A Yes, when there is cargo in there that requires it.
11	Q Or when there is no cargo in there?
12	A No, then we don't need it.
13	Q I didn't ask you whether you need it. You can turn
14	it on, can't you?
15	A You can, yes.
16	Q And when you would turn it on and there is no
17	one in that hatch or in the dust storm, the ventilation system
18	would blow fresh air in, create the dust storm, and the
19	exhaust system would draw it out, isn't that correct?
20	A Not necessarily. If the cargo compartment is empty,
21	and you turn on the fans, the air that you are pumping in is
22	going to take the path of least resistance right across the
23	top, in, out. It's not even going to come down on the deck.
24	Q Not at all?
25	A Hardly at all. It's going to follow the path of

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Wheeler-Cross

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A Yes, yes, sir, it would.

Q And would that be so even if the man who was working or the men who were working there both had to -- all had to maintain their back towards that light?

A Well, if their own activity created shadows that interfered, then they would move the light.

Q Where?

A To their satisfaction.

Q Where would it be to their satisfaction to avoid that shadow?

A To a position that would not cast that particular shadow or shadows in that particular direction.

- Q Under these facts, where would that position be?
 - A Somewhere towards the port or starboard side.
- Q Facing?
- A Either way.
- Q Wouldn't that cause a shadow to the side?

A 17 that shadow interfered with their activity they wouldn't put it there so it's up to them.

Q I didn't ask you that question and I would appreciate it if you would listen to my questions very carefully.

If you put it to the side, it would pass the shadow to the side?

1	mb/lf Wheeler-Cross	686
2	A Of course.	
3	Q And if you put it in the front of the man	it would
4	cast a shadow to the rear, is that correct?	
5	A Of course.	
6	Q What if you hung a light at each end, wou	ild that
7	eliminate the shadow?	
8	A Not necessarily. It depends on the activ	vity of the
9	men involved.	
10	Would it under these facts?	
11	A I don't k ow because you have a diffused	light; if
12	they were in the area of this diffused light they	would
13	cast a shadow, their body would cast a shadow.	
14	When you put a light on its side, isn't	the area
15	of illumination limited and confined just to the	lower portion
16	where that light goes back?	
17	No. If the light is on its side it's re	flected
18	upward and you got a diffused reflection coming do	own from
19	the overhead surfaces.	
20	Q You say reflected upward?	
21	A Yes.	
22	Q If you just take a look and just placed	it on the
23	side without tilting it, would that go upward, Ca	ptain?
24	The light that you saw here in the photo	graph, when
25	it's laying on its side, the reflector is in abou	t a 45 degree

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No, sir.

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Which means that air can't get in?

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1	mb/lf Wheeler-Cross 689
2	A No, sir.
3	Q Air can get in?
4	Air can still penetrate the folds of the tarpaulins.
5	Air can penetrate.
6	Q How about the solid row of metal pontoons? The
7	air penetrate that?
8	A But there is about a half inch crack between each
9	pontoon. There is about an inch between or space, there is
10	clearances. But air can penetrate the tarpaulin through
11	the folds of the tarpaulin.
12	Q If the tarpualin got wet it's porous?
13	No, it's the tarpaulin is made out of cotton
14	fabric, textile, and when it gets wet it shrinks and becomes.
15	the weave and the warp gets tighter.
16	Q Now you testified that the duct plates, the ventilation
17	system in the deep tank was used to stop impurities from going
18	out, 1s that correct?
19	A Yes, from coming in.
20	C From coming in?
21	A Right. That would contaminate the lube oil.
22	What impurities would you talk about that would
23	be coming in?
24	A From the other cargo compartments that were served
25	by the same ventilation system. They have dry cargo in them.

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They might have some of the dust we were talking about before and that could conceivably be circulated into the tank.

Q Assuming that the duct plates were not in, and there was a cargo of lube oil present --

A Yes.

of preventing the oil from seeping out into the ventilation system?

A It would prevent the oil from seeping out into the duct work and -- but the oil would rise no higher than the surface of the oil in the tank so you would just plate the lower part of that ventilation system. That's not the purpose of the plates.

That is what I was about to ask. Isn't that the primary purpose of these duct plates to prevent the oil from going out rather than dust from coming in?

Because you are at the end, the tail end of the ventilating duct system. The tank is at the lowest point in the ship. That is the tail end of the ventilating ducts.

Q How about some real rolls, if there were no duct plates, by rolling I mean the movement of the ship side to side, if there was no duct plates wouldn't that oil seep out into the ventilation system?

A Only to the lower extremities of it, right where the

1	mb/lf Wheeler-Cross 693
2	the ship, you make a lee, you maneuver so that you can do it.
3	Forget an emergency. If the weather as you just
4	stated permits, is it safe to open a hatch at sea?
5	A Yes.
6	THE COURT: Let me ask you this. in a voyage across
7	the Pacific, is it normal practice to keep the hatches
8	battened down?
9	THE WITNESS: It is, yes, sir.
10	Q Chief Minor testified that he removed the duct
11	plates to blow fresh air in.
12	A Yes.
13	Q The deep tanks.
14	A Right.
15	Q To remove some of the moisture from the lube oil?
16	A Yes.
17	What does that indicate to you; that the lube oil
18	was still moist?
19	That the lube oil was still moist?
20	Q Yes.
21	A That the lube oil in the sump, because the lube
22	oil will not stay on a vertical bulkhead for two months. It
23	drains down and it flows into the sump and before loading
24	his next cargo, which was going to be dry cargo, he wanted
25	

to make sure that the sumps, the bilges, had been aired out,

dried out. That's what it means to me.

Q If there was lube oil on the bulkheads after a period of three months of washing the tanks down, what would that indicate, if anything, to you?

A It's not consistent. It just wouldn't happen.

Just wouldn't happen. It's impossible?

A After two months. You can't keep lube oil on a vertical surface for two months.

Q Could the lube oil dry to the consistency of being sticky? Wouldn't that stay on?

In a period of maybe a week, it would be gooey, gummy, sticky. Because the solvents have evaporated and the graphite and the resins that are residue on there would be sweating, would be curing, sort of, and later they would become hard.

Would you agree that the purpose, one of the purposes of the ventilation system is to remove the moisture from the air?

A To remove the moisture from the cargo, not from the air.

How about from the air around the cargo?

A No, when you have humid atmosphere outside we shut off the ventilation because we don't want to pump humid air into the cargo. When we have dry or less humid air outside,

existing air around?

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was of the opinion that there would be plenty of air in the hold; that the ventilation provided was quite adequate; and that the light was sufficient to do the job required.

There was, of course, testimony by Lugo, himself; from Captain Sigda, the master of the vessel; by the mate, Minor; and the bosun, Gomez; on the conditions on the vessel during the event of June 1st, 1972, when the accident happened.

I may say, in passing, that there is no evidence in that record as to the availability of any other witness to either party--and I am talking now of LaFrance and Palmer. As far as the record shows here, both witnesses were equally available to either party and no inferences whatsoever can be drawn from anybody's failure to call them.

On the basis of all the testimony, it's for

You to determine whether or not, as the plaintiff claims,

the S.S. STEELMAKER was unseaworthy at the time of the

accident because of the conditions in the hold; or whether

the shipowner, acting through the officers and other

supervisory employees on the STEELMAKER, was negligent

in requesting the plaintiff to work in a place where there

were not reasonably safe working conditions; and whether,

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if there was unseaworthiness or negligence, either of those factors was a proximate cause of the accident to Lugo and the resulting injuries.

Of course, there are also questions as to the extent of Lugo's injuries, the effect of such injuries on his ability to work, both in the past and in the future, and the amount of damages he suffered.

You will recall of course, the testimony of Lugo, himself; the doctor he produced; the doctor who was put on the stand by the defendant; and the records of his treatment in the hospital on that subject.

And, finally, there will be an additional question as to whether Lugo's own negligence contributed to the accident, and, if so, to what extent.

I am now going to turn to a discussion of the elements of these various questions and the law as applicable to it. As I told you, the plaintiff here makes two claims against the defendant, Isthmian Lines, the owner of the vessel, on two different theories:

The first theory is that the S.S. STEELMAKER was unseaworthy with respect to the conditions which prevailed in the hold of the vessel at the time that the plaintiff and the other two seamen went into the hold to work.

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The second, I will discuss with you a little later, is that the defendant was negligent in sending Lugo to work in an unsafe place.

The mere fact that an accident happened or that the plaintiff, Lugo, was injured, does not make the defendant liable. The Isthmian Lines is not an insurer of the plaintiff's safety. Liability against the defendant must rest upon proof of the elements of the plaintiff's case.

I will first discuss the question of whether or not the STEELMAKER was unseaworthy at the time of the accident on June 1st, '72. The plaintiff has the burden of proof by a preponderance of the evidence, as I have defined it to you, that the vessel was unseaworthy as he contends. The doctrine of unseaworthiness is founded on the ancient law of the sea, which is known as the "warranty of seaworthiness of the vessel." It imposes upon the owner of the vessel, in this action, Isthmian Lines, the duty to provide the crew with a seaworthy vessel, with seaworthy equipment. This duty imposed on the slipowher is non delegable. That is to say, the shipowher cannot relieve himself of this duty by transferring or shifting the responsibility to someone else.

To be seaworthy, a vessel must be reasonably

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It is merely whether the ship and her equipment were reasonably fit for and adequate for the purposes for which she was intended. Thus, the shipowner is not required to furnish an accident-proof ship nor, as I mentioned before, is the shipowner an insurer of the safety of the members of the crew such as Lugo. The shipowner is merely required to furnish a ship with equipment reasonably fit for prudent crew members to work on. Each and every part of the ship is required to be seaworthy. Thus, the owner of a ship is under an obligation to provide a reasonably safe area in the hold of the vessel in which employees are to work.

Unseaworthiness doesn't depend on any showing of negligence on the part of a shipowner. If the vessel or its equipment are unseaworthy, even the exercise of reasonable care does not relieve the owner of its absolute duty to furnish a ship and its equipment in reasonably fit condition for intended use; nor does unseaworthiness depend on whether the owner knew of the defective condition.

If a ship fails to meet the standards I have just given you, it's unseaworthy, whether the owners knew of the defective condition or not, and no matter how the

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condition which rendered the ship unseaworthy came about.

Lugo's claim is that because of poor ventilation and poor lighting in the No. 2 hatch, the STEELMAKER was unseaworthy because the hatch where he was sent to work was unsafe and not reasonably fit for its intended use.

It's for you to determine whether or not the standards required in order for the ship to be reasonably safe and fit for its intended use have been met; and thus, whether or not the vessel was unseaworthy, as Lugo contended.

Lugo also claims that the defendant, acting through the ship's officers and supervisory personnel of the vessel, was negligent in sending him to work under unsafe conditions. Plaintiff claims that the defendant was negligent in not seeing to it that the No. 2 hatch was reasonably safe for the plaintiff and the other two working men to work in, two seamen to work in. The claim of negligence is quite distinct to the claim of unseaworthiness.

what do we mean by negligence? Negligence is simply a breach of the duty of care which one party owes to another. The owner of a vessel has the duty to exercise such care as a reasonably prudent person would exercise in similar circumstances. It has the duty to use

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such care in furnishing the plaintiff with a reasonably safe place in which to work and move around, and to maintain such place and the equipment located there in reasonably safe condition.

Put another way, the owner of a vessel is required to take such reasonable steps as may be necessary to prevent accidents that might be reasonably foreseeable by a careful, prudent shipowner under the circumstances.

Again, the plaintiff's burden is to prove by a fair preponderance of the credible evidence that the defendant was negligent, and to prove there had been a breach of duty of care that was owed him by the shipowner.

Of course, when Italk of the defendants here,
the defendant is a corporation and it only acts through
its agents and employees. The shipowner here may be
liable for any in uries resulting in whole or in part from
the negligence of its officers and employees, and this
includes the plaintiff's fellow crew members aboard the vessel.
With that in mind, in order to establish his second
theory of liability, that is negligence, the plaintiff
must prove by a fair preponderance of the credible evidence,
that a reasonably prudent shipowner or his reasonably
prudent employees aboard ship in the exercise of reasonable
care would not have permitted Lugo to work under the

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conditions of ventilation and light which you have heard described here.

As I told you earlier, I am going to submit to you a series of questions in writing for you to answer, and I will review these questions completely with you at the end of this charge:

and I am quoting, "Was the S.S. STEELMAKER unseaworthy or was the defendant, Isthmian Lines, negligent?" This question, of course, is with respect to the conditions of the No. 2 hatch at the time the accident occurred. You will be asked to answer that question yes or no. If you answer the question no, you will go no farther and report your answer to the Court. If the answer to that question is yes, you then go on to the second question which is the question of proximate cause.

What do I mean by proximate cause? Proximate cause means, in effect, a producing cause of the accident which resulted in the injury. It must be an unbroken chain of events or circumstances flowing from the unseavorthiness or the negligence, if you find there was such, and leading to the accident. There must be a direct causal connection between unseaworthiness or negligence if you find any and the accident which caused the injuries.

23.

The question is whether any unseaworthy condition of the vessel or any negligence on the part of the shipowner played any role in producing the accident which Lugo suffered and the injury which resulted from that accident. Thus, the second written question to be submitted to you is, "Whether or not unseaworthiness of the STEELMAKER or negligence of the defendant ship-owners was a proximate cause of the accident and the injuries which the plaintiff suffered."

The burden is on the plaintiff to establish proximate cause by a fair preponderance of the credible evidence. Even if you find the vessel unseaworthy or the shipowner negligent, this does not establish liability on its part.

The question here, this second question, important as it is, is: "Whether even if there was unseaworthiness or negligence, this was a proximate cause of the accident to the plaintiff and the resulting injuries."

I may say to you that the question of causal relationship between the conditions which were found in the hold, whatever you found them to be, and the accident suffered by Plaintiff Lugo, is of particular importance in this action and should be considered by you carefully.

UNITED STATES COURT OF APPEALS .
FOR THE SECOND CIRCUIT

VICENTE LUGO,

Plaintiff-Appellant,

: Docket No. 75-7659

against

CERTIFICATE OF SERVICE

ISTHMIAN LINES, INC.,

Defendant-Appellee

appeller

WE HEREBY CERTIFY that copy of the attached (1004)
Brief/and Supplemental Appendix was this date served on

Schulman, Abarbanel & Schlesinger Attorneys for Plaintiff-Appellant 350 Fifth Avenue New York, N.Y.

Dated: New York, New York May 3, 1976

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